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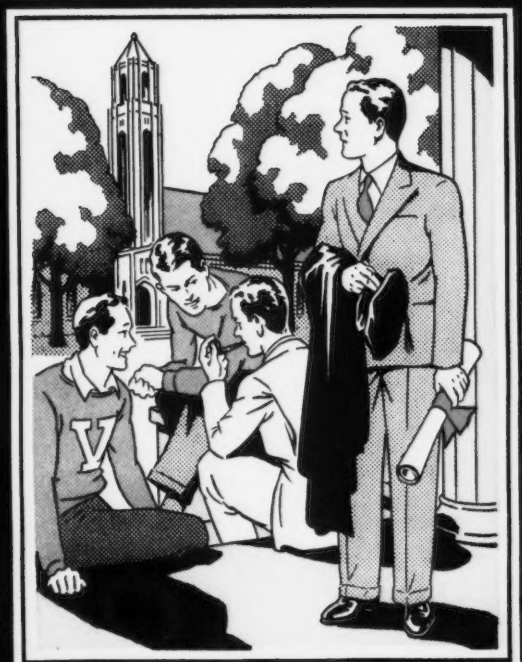

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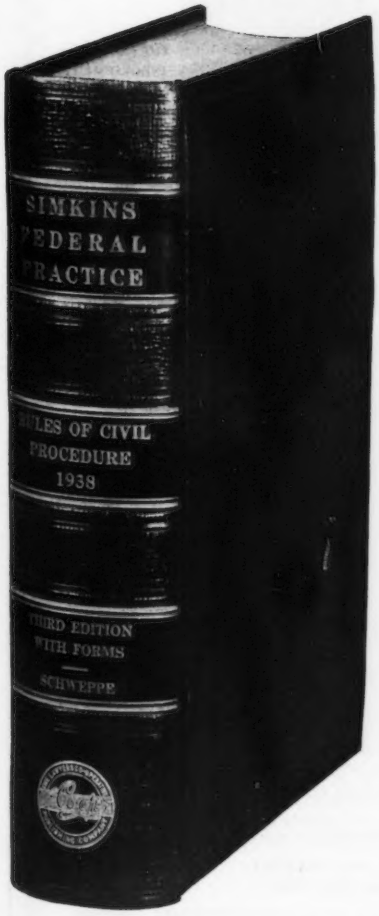

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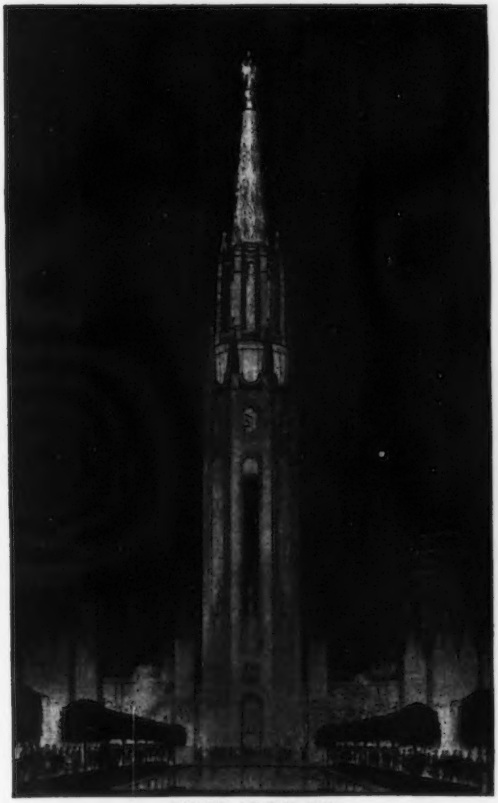

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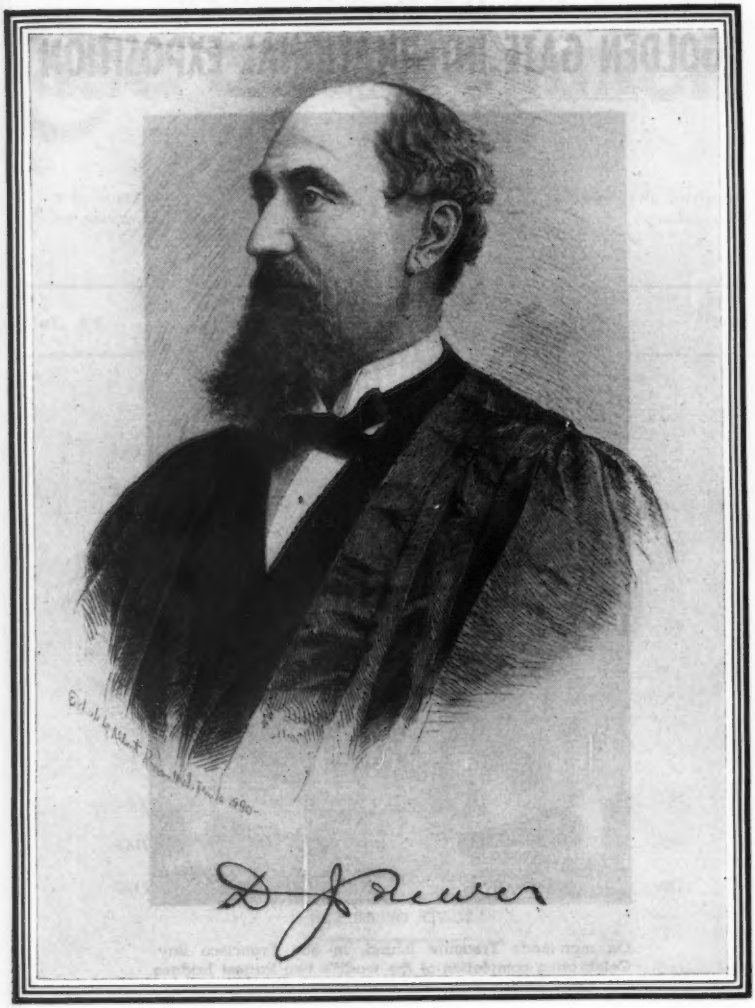


EULOGY ON HOME LIFE

By JUSTICE BREWER
Former Associate Justice of Supreme Court of United States

(Opinion in Re Bullen, 28 Kans. 781)

The opinion of the court was delivered by Brewer, J.: This is an application in habeas corpus, brought by Joseph A. Bullen in behalf of Emily C. Evans, a little girl of the age of six years, against Josephine Cantwell, praying that the said Emily C. Evans may be taken from the custody of the respondent and sent to England, to be placed under the care and guardianship of her grandmother, Catherine Anne Evans. The questions in the case are in many respects novel and interesting, and the conclusion to which I have come has been reached with much hesitation. The facts of the case are these:

The grandparents of the child were residents of London, England. The father of the child (their oldest son) some time about the year 1868, then about twenty years of age, came to this country in the hope of bettering his condition. In 1875 he married, in the city of Leavenworth, Catherine Mary Murray, and shortly thereafter returned with his wife to London, where, on the 2d day of September, 1876, Emily C. Evans was born. On June 22, 1878, the father died, and in December of the following year the mother, with the little girl, returned to Leavenworth, in hopes of meeting a brother in this city, supposed to be in comfortable circumstances.

She was disappointed in this expectation, and being without means, proceeded to support herself and child by her own labor. In the spring of 1880 she was taken down with consumption, was unable to do further work, and became very destitute. In April of that year, information was received at the Home for Friendless Women, of her condition, and Mrs. Bullen and Mrs. Legate, in response thereto, proceeded to North Leavenworth and found her in the basement of a little house, in extreme destitution and weakness. Words fail me to picture clearly her forlorn and wretched condition. Wasted by sickness, weak and feeble, she was lying on a little mattress on the floor, sheltered from the cold by only a few rags. There was no furniture in the room, no fire, and the room was cold and damp. Her little child was running around scarcely half clad. These ladies removed her and her little child to the Home, where they remained a few days, and then, becoming dissatisfied with the matron, she with her child left and returned to the basement. Here, within a few days, she was found by Mrs. O'Connor and Mrs. McFarland, who soon procured her admission to St. John's Hospital, where she remained, gradually failing, until her death, on September 5, 1880. During these last days of feebleness and disease, she was tenderly cared for by the good Sisters in charge of the hospital, and I have no reason to doubt that everything was done by them which sympathy and love could suggest to make bright and peaceful the few last days of life, and to assuage a mother's grief at leaving her only child a lonely orphan in the world. I pause a moment in the coldness of judicial opinion, to say that every true man stands with uncovered head in the presence of a kindly charity such as this case discloses, when gentle woman, foregoing personal ease and comfort, drawn by no tie of blood nor for old acquaintance' sake,

but moved alone by the impulse of a common humanity, seeks out a wretched and helpless one, removes her from a dreary, cold and desolate abode to surroundings of warmth, cleanliness and comfort, smooths with tenderest touch the pillow beneath her weary head, and brings to the heart of a dying mother the richest of all comfort, in the assurance that the little life she leaves behind her will be tenderly cared for by loving hearts and hands. Such acts redeem poor human nature from all its burden of selfishness and sin, and make us thank God that we are brothers to such sisters. But returning, it appears that while at the hospital, at her solicitation, proceedings were attempted for the purpose of having her child adopted by St. Mary's Female Academy, conducted by the Sisters of Charity of St. Vincent of Paul. It is conceded by counsel that these proceedings were ineffectual for the purpose of effecting a legal adoption, yet they confirm a fact, abundantly established by other testimony, that during her last days she desired and earnestly besought the Sisters to take care of her little girl; and they, on the other hand, comforted her dying hours with the promise to watch over and care for her during her childhood and until she should reach the years of maturity. It is also true that while she was at the Home for Friendless Women, she as earnestly urged the good ladies there to see to it that after her death her child be sent to its father's family in London. I see no reason to doubt the fact of both these requests of the mother; nor do I see anything unnatural in her conduct in this respect. It seems to me it must be true, not alone because the witnesses testify to it, but because I think it is just what a mother would do under those circumstances. Since the mother's death the Sisters have fulfilled their promise to her, and have taken tender and faithful care of the little girl. The testimony of the witnesses shows this, and the little one's face and appearance confirm it. Turning now to the other side, it appears that the grandfather of the child died in 1879, leaving a widow and children. He made a will, which has since been duly probated. By this will he left all his property in trust that the yearly income should be paid to his widow during her life or until she married again, and upon her death or marriage, to be divided among his children: this trust to continue until the expiration of twenty-one years from the death of the longest liver of his children. He especially provided that his granddaughter, Emily C. Evans, should take the place of her father and share in his property; but coupled this provision with the condition that she be brought to England before she attained the age of seven years, and not reside abroad thereafter; that she should be brought up and remain in the Protestant faith, and not marry a Roman Catholic. At the expiration of the trust as above indicated, the entire property was to pass to the person who should then be his heir at law. And in the meantime, the death of any child increased by so much the share of all the survivors.

The testimony shows that upon the settlement of his real estate, there remained nine freeholds, now producing in the aggregate a rental of sixteen hundred and twenty dollars. It further appears that the grandmother has a comfortable home, well furnished, situated in the city of London, in which she lives with an unmarried son and two unmarried daughters. The testimony abundantly shows that her home is all that could be expected of one in ordinary circumstances of life; that the income is sufficient to maintain the family comfortably; that the characters of the inmates of the

family are above reproach; that all the members of the family feel a deep interest in, and strong attachment for their little orphan relative here; and that if this child is placed in that family it will have all the advantages of personal and affectionate care, education, moral training and social position which come to those who live in ordinary walks of life.

This, I think, presents a fair summary of the facts of the case; and from this statement I pass to a consideration of the questions presented and discussed by counsel. On the one hand, it is claimed that the grandmother has no legal right to the custody of the child; that it is never the province of the court to expatriate a citizen, even though that citizen be a mere child; that the expressed wishes of the dying mother should be respected; and that beyond all these matters, the child is at present happily situated, in good hands, kindly and properly cared for, and that there is not under the testimony enough to satisfy that the change asked for would substantially better its condition, or promote its welfare. On the other hand, it is contended that upon a change, the little girl will obtain that which she now lacks—the surroundings and blessings of a home, where personal attachment and not official duty is the controlling spirit; that she will secure a property sufficient for her support, and which will render her comparatively independent, and that therefore the interest of the child, which in all such cases as this is the paramount consideration, demands the change. Clearly the grandmother has no right to the child; there is on her part no legal obligation to support it, and therefore no legal right to its custody. It cannot be said that the child is illegally restrained of its liberty, deliverance from which, as counsel well say, was in the first instance the purpose and object of habeas corpus. Yet, as to children at least, the scope of the writ has been largely extended. Beyond the mere matter of forcible restraint, of technically illegal confinement, the courts will inquire whether the surroundings of the child are such as make for its highest welfare, and will do for it that which such welfare compels. In such cases, it is in fact the petition of the child; and I know of no duty more delicate and responsible than that which such petition places upon a judge. Take the case before me: The parents of the child, the ones who by every law, human and divine, are charged with the sacred duty of protection, support, care and promotion of its highest welfare, are both dead. By this petition, in effect she comes to me and says: "They who were my guardians by nature have passed away. My feeble steps are just commencing the walk of life; I know nothing of the world and its ways; I cannot tell what will be best for me; I appeal to you to take the place of father and mother, to decide for me, who am too young to decide for myself, and to place me where I can receive the highest advantages; and where the surroundings of my life shall win for it its best and highest fruition; and so that when I reach the years of womanhood, I can look back to this hour and this decision, and say, 'I thank you.'"

Do I demean myself by saying I shrink from this responsibility? I cannot agree with counsel, that it is never the province of the court to expatriate a citizen. In some cases I think the duty so to do is clear and absolute. As, for instance, where parents moving to a foreign country and leaving their little child here for a while, come back to claim it and are hindered by those who have it in possession. Nevertheless, it is a matter always to be considered. With pardonable partiality, we look upon our own

land, its laws, institutions and social life, as the best; and not lightly should a child be deprived of the benefit of them. Yet we may not ignore the fact that the mother country is a land of liberty and law, of education and social refinement, of morality and religion; and it would be wrong to make the matter of expatriation an excuse for depriving this little girl of that which would promote her welfare. Neither is it clear that sending this child to England would be technically an expatriation. The child was not born in this country, and there is nothing in the testimony which shows that either parent ever ceased to be an alien, or became a citizen. Further, the grandmother has been appointed by the courts of England the guardian of this little girl, and if now this petition is granted she will pass under the special care of those courts, the faithfulness of whose watch in cases of this kind is a matter of universal recognition. But I place comparatively little stress on this, and turn to the paramount question and ask, What will be best for the welfare of the child? And looking at this question in the light of experience, and testing it by the generally recognized facts of society and life, I can but think that the welfare of the child, its best interests, will be promoted by granting the prayer of the petition. Two principal reasons control in my mind: First, her life here would be a life in an institution; there, a life in a home. I need not stop to recount the numberless blessings which home gives to a child, especially a female child. The common judgment of all voices the truth, that the best development of a young life is within the sacred precincts of a home. No institution, however cultured and refined its instructors, however pure its life, however faithful and devoted all its officers and teachers to the care, nurture and education of the many children within its walls, will give that sweet, gentle and attractive development to a young girl, that comes from the personal and affectionate training of a home. There is something of the same difference as between hotel life and home life. There is more publicity to the one; more privacy to the other. There is something official, as it were, in one, and personal in the other. The varied graces of true womanly nature ripen more sweetly and more surely in one than in the other. I would not detract in the least from the advantages which these institutions afford to the young. I believe they are a large blessing, and that even for those children who have homes, an occasional and temporary sojourn in one is of lasting and incalculable benefit to the development of the child. But when it comes to the question of a life wholly within an institution, and one wholly a home life, I think all will agree that the latter is to be preferred. I think every parent, when asked whether he or she would have his or her child forego during all the years of childhood the blessings of a home life, for the sake of the advantages furnished by even the best institution in the world, would unhesitatingly answer in the negative. And I doubt not the good Sisters in this institution, many of whom look back with sacred reverence to the home life of their childhood, with all their pride in and affection for that institution to which they have so sacredly devoted their lives, still feel in their inmost hearts that that home life was a blessing which nothing else could equal to their early days.

Second, there is a pecuniary consideration. I am not so sordid as to believe that money is the one thing to be regarded; but other things being equal, that certainly is a matter to be considered. If she remains here she will come to maturity without means,

and dependent solely on her own labor or the help of others. There she will have a little property—not a great wealth, it is true, but enough to keep want away and to enable her to act freely in her choice of place and work in life. There is also a possibility, though perhaps only a remote one, of her becoming through the death of others the heir to quite a property. It is true there are conditions attached to the receiving of that property which to my mind are odious and unjust. They indicate a bigoted spirit on the part of the testator, so foreign to the free and catholic spirit of today, that every true man must condemn them. Yet this little girl ought to have the opportunity to decide for herself, when she comes to maturity, whether she will accept or reject the property burdened with those conditions. Today she knows nothing of the value of the property, or the meaning and import of the conditions. It would be wrong to refuse her the privilege of an intelligent choice. When she arrives at years of discretion she may prefer to accept her mother's faith and reject her grandfather's proffered bequest, or she may prefer to accept the bequest and walk in the faith of her father; but unless the prayer of the petition be granted, she will never have the opportunity of accepting it.

Counsel have made a most eloquent appeal that the wish of a dying mother as to the future of her child should be respected. The precious recollections of my own childhood, with all the shapings of my life through the gentle influence of a loving mother's care, from its first helping my infant steps, up through all the sunny days of childhood, to her dying blessing in manhood's morning hour, send this appeal home to my heart with tremendous force. But I interpret the mother's conduct and desire thus: She was a stranger in a strange land, alone, and dying. The uppermost thought in her heart was the future of her child. When with the ladies of the Home, she turned to her husband's family home as the surest and most certain place of refuge for her orphan child, and she begged the ladies to see that it was sent thither. Afterward, when she passed into the kindly care of the good Sisters, and found what faithful friends they were to her in her time of need, she believed the same kind care would be extended to her little one, and begged of them to take it. In other words, thinking only of her child, she ever turned to that which at the time seemed the nearest and surest succor for its helplessness, and prayed for the care which she was no longer able to give it. Evidently, from a letter written by her while at the hospital shortly before her death, her affection for her husband's family and her friends was strong to the last, and she committed her little one to the care of the respondent through no aversion to them.

If from the calm and peaceful heights of heaven the departed look back with loving interest upon the things of earth, I can but think that she will look down approvingly upon the conclusion I have reached. I know she will approve the spirit with which I act, even though she may not the wisdom of my conclusion. The order then that will be made, is: that the prayer of the petition be granted, and the child be given into the custody of Mr. Bullen, to be by him sent to its grandmother in London.

As the opposition of the respondent to this petition has not been from any factious spirit, but under a sense of obligation springing from a promise to a dying mother, I think the costs of this proceeding should be paid by the petitioner.

All the Justices concurring.

COMMON MISTAKES IN THE TECHNIQUE OF TRIAL

By MASON LADD

(Condensed from Iowa Law Review)

THE function of the objection, as suggested by Dean Wigmore, "is first to signify that there is an issue of law, and, secondly, to give notice of the terms of the issue." The statement of the grounds of an objection is indispensable, but it need not be lengthy, being sufficient if it calls to the court's attention the element of inadmissibility or incompetency involved. It is usually enough to mention as the reason for an objection the appropriate subject title of the issue, such as an objection to a question because it calls for hearsay, opinion of the witness, or because it violates the best evidence rule, the statute of frauds, or the dead man's statute. In some instances, however, the grounds of the objection must be stated with much greater refinement. In framing such objections, the task is simply to put in a pointed statement the legal theory supporting the exclusion.

Constant argument upon admissibility of evidence is not proper, and most courts will not permit it. From his continuous experience with the usual run of admissibility problems, the judge is generally capable of ruling on objections without argument, and argument is not essential for the record on appeal. Except upon special points which are crucial to the success of a trial, counsel should object and except to an adverse ruling without discussion. The application of the suggested principle of tersely stated objections without argument except upon unusual and material points would eliminate the recognized but common error of prolonging a trial with prolix objections and unnecessary argument.

Over-objection

Over-objection is not an infrequent vice in the trial of a lawsuit. Unconscious apparently of the effect, counsel sometimes urge an objection to almost every question; the fact that the objections are repeatedly overruled does not deter the process, nor does the fact that the answer comes in when the objection is sustained, by the examiner putting the question in a different form. In such situations it would appear that the end to be sought in a trial is to object as often as possible, and this is emphasized in some trials in which on cross-examination counsel proceeds to interrogate the witness upon the majority of matters to which his objections were sustained on direct examination. The damage of over-objection is apparent when another attorney is seen to abuse the privilege, but to the one engaged in the process of committing the offense it is not so plain when to stop or to determine when a possible objection should be omitted. Indeed, counsel is placed in a tight dilemma of suffering the consequences from failure to object or submitting to the peril of being branded as a contentious over-objector, and of being regarded by the Bar as one who overtries his case. Are there any means by which the wise course may be chosen? What factors should be considered in deciding when to object and when to waive objection? While there is no fixed rule, there are some helpful ideas to weigh in determining

the problem, which may be profitably considered.

Repetition of the Same Objection, Properly Urged but Overruled

One guiding principle for the elimination of superfluous objections is that repeated objections need not be made to questions calling for the same type of proof if a proper objection has been made and exception taken when adverse party first offered the objectionable testimony and it was admitted.

The rule cannot be blindly followed, however, and must be distinguished from situations superficially similar as well as in its own ramifications. If the objection to inadmissible or incompetent evidence be properly sustained, it is necessary to repeat objections to offers of similar proof to render the admission of such evidence error.

Objectionable Questions Which Can Do No Harm

In every trial there are questions asked, improper in form or substance, to which an objection should not be urged, in the interests of an orderly and successful trial. A number of these situations will be stated. If the evidence sought to be elicited can do no harm, an objection should generally be waived, unless such evidence becomes excessive or may have the effect of sidetracking the issues.

Leading questions often provoke undesirable though proper objections. If the question is objectionable only because it is leading, counsel should not object as to preliminary matters, nor as to material matters when it is believed that the witness would give the same answer as readily to a nonleading question. Testimony of a friendly witness on direct examination is generally less damaging in a yes or no form in response to leading questions than it is in a narrative statement in answer to nonleading questions. An attorney who uses leading questions on direct examination, when not necessary to obtain the desired statements by a witness, loses much of the effectiveness of the testimony given.

Similar to leading questions, an examination calling for an opinion of a witness may be less damaging than facts. If the witness could testify to facts but the form of the question calls for opinion, it may do no harm and counsel may fail to inquire as to the facts. The opinion objection is often overworked. To urge it in some instances only helps opposing counsel to build his case more forcefully. However, in those situations in which the witness may not know the facts, or in which the opinion may be an erroneous deduction from the facts which the witness knows, it is very important that objection be urged and the improper opinion of the witness be excluded. In some cases, the waiver of an objection to inadmissible proof may be the only means of opening up subject matter upon which the evidence is more favorable to the adversary than to the examiner. Helpful evidence otherwise inadmissible thus becomes a part of the record. There are undoubtedly many other instances in which counsel should not seek to exclude inadmissible evidence because it can do no harm. Those given sufficiently illustrate the point, and emphasize the importance of being ever mindful of the problem of proof when considering the use of the exclusionary rules.

Damaging and Prejudicial Testimony

Questions calling for inadmissible proof which is damaging and prejudicial should be objected to on any and every possible ground. Even if an attorney appears to be making an exces-

sive number of objections, this is preferable to admitting without contest issuable evidence devastating in its effect. The function of attorneys in court is to be vigilant in the protection of their clients' rights. Without objection there can be no recourse for the error of admission. While the court might in his discretion exclude improper evidence on his own motion, the general practice of courts is to receive the testimony offered without objection. These principles are, of course, familiar to the Bar, but it is desired to emphasize them, in the face of the criticism made on over-objecting. The fact, however, that evidence is damaging and prejudicial, is not of itself a cause for an objection, and objections are sometimes erroneously made only because of that fact. If there is no proper objection, either to form or substance, the urging of an objection simply attracts the attention of the jury to the importance of the answer when the objection is overruled. Juries ordinarily hold the court in most high esteem. The judge, being in an impartial position and personally unconcerned with the outcome of the trial, is, whether right or wrong in his ruling, looked upon by the jury as being always right. Counsel cannot escape an intangible but real effect as a result of constantly being held in error by the court. Therefore, a proper trial technique would avoid urging objections to testimony unless there be a reasonable expectation of a favorable ruling, or the possibility of reversal if it be unfavorable.

Offer of Proof

The same factors considered in determining the propriety of objections operate also in connection with offers of proof. It is important that the examiner be always alert to the necessity of an offer of proof when an objection to a proper question is erroneously sustained. Such an offer is generally a prerequisite for perfecting a record on appeal. Offers, however, like objections, surely should not be made upon every adverse ruling, but only when the point is sufficiently material that a reversal would be justified for the exclusion, and when the admission of proof cannot be obtained through a different avenue of examination. It may also be desirable to make an offer when the proof is regarded as helpful in a fair presentation of the facts, and the examiner considers the offer would disclose its admissibility and cause the trial court to change his ruling. The offer in this way would tend to illuminate the court. Although excessive offers are objectionable, generally there are too few rather than too many offers of proof.

Exceptions

The subject of exceptions to the adverse rulings of the court upon the admissibility of evidence has not been generally troublesome, but is nevertheless important. The form of an exception varies, some courts taking the view that the exception must be detailed in character and should show its grounds without the necessity of referring back to the objection. At best, an exception to a ruling upon evidence is but a formal declaration of dissatisfaction with the court's ruling, which is made as a condition to the right of appeal, and should be stated by the party adversely affected. Inasmuch as the grounds of exception already appear in the objection, repetition of the grounds, or of the fact that the party excepts, is a useless formality. There may be an occasion for an exception, when the examiner claims evidence has been erroneously excluded and wishes to state some additional issue on admissibility not embodied in the objection. Ordinarily, however, the simple facts that an exception is noted should be sufficient,

and this represents the common practice.

Motions to Strike Testimony

A great lack of the proper technique of trial is found in the use of motions to strike testimony. The law applicable rests upon the basic principle that objections to evidence must be made at the time questions are asked, or when it first appears that the testimony is objectionable. The right to object to inadmissible proof is waived by permitting inquiry into the subject matter without objection, by express consent, and by failure to interpose a timely objection. It would not be fair practice to permit a party to speculate on the chances of a favorable answer, and allow him to exclude it if it proved unfavorable. Attorneys can make their own rules of evidence by failure to assert the existing ones, and they do so by failing to be alert in urging objection at the time a question is asked. Indeed, the exclusion of evidence after it has been heard by the jury cannot escape the subconscious influence which the testimony may have had.

It is recognized, however, that in some instances it would be a harsh rule to leave improper evidence in the record unquestioned, when counsel was not at fault in failing to interpose an objection. It is under such circumstances that a motion to strike the testimony offered by an adversary may be made. There are two principal grounds for a motion to strike in this situation; first, that the answer was given before counsel had time to object, and second, that the answer was unresponsive to the question asked. Also, the court in its discretion might permit a motion to strike if the question was not heard by counsel. It is a common error for counsel to assume that the excuses are the true grounds of the motion to strike, and to urge no other reasons to support the exclusion. To sustain a motion to strike, counsel must also urge the same grounds for exclusion which should have been urged in objecting to the question asked, or which he would have urged if the question asked had disclosed the answer given. The result is that if a question is improper but an admissible answer is given, or if a question is proper and the answer is admissible but not in response to the question asked, a motion to strike cannot be sustained, because, while there may be an excuse justifying the failure to object, there is no independent ground upon which the answer can be excluded. The proper technique, therefore, of making a motion to strike testimony offered by an adversary is to state the grounds for failure to object, and accompany them with a separate statement of the reasons why the answer is incompetent or inadmissible. It is also important to specify in the motion that particular objectionable testimony, whenever it is included with other testimony not subject to exclusion.

The General Objection, Incompetent, Irrelevant and Immaterial

The objection which received perhaps more everyday use than any other is that evidence is incompetent, irrelevant and immaterial. The meaning of this objection might well be the subject of a separate article. The points to be here considered relate to the technique of using the objection, assuming knowledge of its substance. Generally, however, it may be said that incompetency refers to the kind and character of evidence in respect to its logical connection with the fact to be proved, that irrelevancy refers to the relationship of the particular testimony to the issues upon which it is offered, and that immateriality refers to its consequential effect, judged by its probative value. For conven-

ience, the terminology "incompetent, irrelevant and immaterial" is spoken of as a "general objection" to evidence.

When should the general objection be used? What are its pitfalls? Contrary to the principle applicable to hearsay, opinion or similar types of objectionable evidence, wherein if the objection is applicable at all it applies to all parties, the general objection may operate differently as to different parties in a trial. Thus, in a lawsuit brought by X against Y and Z, defendants, a general objection by one defendant, unlimited in its application, is not sufficient if the evidence is admissible against either Y or Z. Unless the objecting party specifically calls to the court's attention the defect in the evidence as to him, the admission of such evidence without qualification is not reversible error. If, on the other hand, the court sustained the objection to evidence admissible against Y but not against Z, it becomes necessary that X offer it as against Y only, in order to assign the exclusion as error for appeal. Similarly, where the action is between two parties only, the exclusion of evidence upon a mere general objection will be upheld, if any ground in fact exists for such exclusion.

It is seen that a general objection has the advantage of operating somewhat in omnibus to support the exclusion of testimony wherever any reason exists for the exclusion. It is also observed that if the objection is overruled, no appeal may be had, if there is some available ground for its admission. The question next arises as to the effect of general objections urged for specific and distinct reasons. Under such circumstances, the value of the general objection is lost, and error may be claimed only if it comes within the scope of the limitation.

The general objection has been criticized as being overworked, and rightly so. Realistically speaking, it may be that it is first interposed to give counsel time to think of what is really wrong with the question asked. It is good practice not to object at all to an adversary's questions, or if an objection is made, to do so upon all issuable grounds. In the trial court, attention shoud be directed to the record for appeal whenever an objection is urged, and everything which tends to make a complete record should be included in the objection. The fact that a general objection sustained will be upheld on appeal if any ground of exclusion is available makes the general objection an important one to be urged, even though it may on first consideration appear superfluous. It is true that the general objection may frequently be ineffective to make an appealable error when overruled, but in protecting a record, when the objection is sustained, it performs a valuable function. The criticism against the general objection is more pointedly directed to all objections, in that they are too frequently urged in trials. If, however, a question is asked involving several elements of error, safe practice requires the inclusion of the general objection.

Conclusion

Obviously, it is not possible in the scope of this article to discuss at length more than a few of the common mistakes in the technique of trial. In closing, it is desired to mention without elaboration one further idea to improve effectiveness in the introduction of proof in a trial.

An examiner, in questioning witnesses, should always be mindful of the twofold object of his examination. First, he is concerned with producing testimony which is admissible as proof, and in asking his questions in such a way as to disclose the admissibility. This deals with the prob-

lem of the exclusionary rules of evidence. Second, he is chiefly concerned with the ultimate function of the testimony admitted as a persuasive force in the problem of proof. The latter is the true goal toward which the examiner is working. The former is but a means to this end. Therefore, while it is important to be constantly mindful of the preliminary issue of admissibility, there should also be constant appreciation of the use of evidence when admitted. These two factors are interdependent in the success of any trial. It is not an uncommon mistake to center attention on the admissibility while testimony is being introduced, and think in terms of evaluation principally when arguing the cause to the jury. The evaluating factors are equally important in the process of introducing testimony. For example, the qualification of an expert is necessary to make him competent to express an opinion. The opinion as expressed is the object of the examination, the qualification but a condition for its admission. Great care should nevertheless be used in qualifying the witness, not only that his later testimony may be admitted, but to establish the witness so effectively that his testimony will be believed. The qualification, as sometimes treated, is but a perfunctory matter of competency. The same principle applies in all cases of foundation testimony. As a condition precedent to admissibility, a proper foundation likewise creates reliability. In impeaching a witness by prior inconsistent statements, the fact that the witness denies having made the former statement, disclosed in the foundation, challenges his credibility quite equally with the discrediting effect of the inconsistent statement itself. Again, a chronologically developed narrative of the testimony of a witness not only aids in avoiding the necessity of stating that the party will connect up his proof, but also aids the witness in developing his story, and the jury in understanding the effect of his testimony in the course of its being given. These situations illustrate principles generally understood but sometimes forgotten, and emphasize the importance of the double function which the attorney performs, both to introduce testimony in the form in which it is admissible, and to do so in such a manner as to make the evidence effective as a probative force.

Nearly all of the points which have been discussed in this article are matters commonly known to the practicing lawyer. It is the common matters, however, which are sometimes neglected and overlooked. Not being the subject for special investigation in respect to any particular trial, they are usually handled as a matter of course. It is hoped that the attention which has been called to them here may serve to clarify the technique involved in their use as it relates to a record for appeal, and also as it makes more effective their function in the trial itself.

CENTURIES *ago, among the Jews, the Chan Aruch provided: "Each judge shall have the following qualifications: wisdom, humanity, fear of God, be a foe to money, have the love of mankind, he must be loving and truthful, he must love a good name."*

WHAT IS JURISPRUDENCE?

By WILBUR CLARKE BENTON

(Extracts from a paper read before the Bar Association of Polk County, Arkansas, February 16, 1939)

WHEN I was admitted to the practice of law some forty years ago jurisprudence was defined as the philosophy of the law. It is now defined as the science of the law. There is a wide difference between these two definitions, and this difference should have our first consideration.

Philosophy is not a science. Aristotle, "the founder of jurisprudence," whose juridical and social philosophy remained largely dominant through the Middle Ages, held philosophy to be "the only true science," but the word science had no such meaning then as now.

Formerly all paths in the realm of intellect led to the door of the professor of philosophy. He was the great wizard of the educational world and was able to maintain his eminence long after the advent of modern science, but today he is little more than a class room elucidator of social phenomena, basing his lectures largely on the findings of science. His courses are saturated with the terms of psychology.

While this paper is written from the scientific standpoint, yet there is here no servile admiration of science, as there has been of philosophy. There is nothing about science to be idolized or worshipped. Its function is merely to discover and explain the what, why, and how of the things around and about us. The philosophers undertook the same task, but used different methods. When they substituted demonstration for speculation they became scientists—became pschologists and sociologists. They were the forerunners of science.

Science is organized, systematized, classified knowledge, gathered, compiled, and tested by approved scientific methods. A scientific fact is a demonstrated fact. Of course, a fact may be a fact without being scientifically demonstrated, but it becomes a scientific fact only when so demonstrated.

Briefly, the difference between philosophy and science is the difference between speculation and demonstration. The difference between a philosopher and a scientist is that one seeks to justify and the other to verify his declared opinion.

There is a widespread notion that there can be no scientifically established laws relating to human activity and social development are not inscrutable. Laws of motion of social forces can be discovered and elucidated. Sociology has already progressed sufficiently to demonstrate this. We have learned that certain impersonal forces, once in operation, force social changes. For a simple illustration consider a society of savages subsisting in a collectional economy on fruits, roots, nuts, berries, eggs, clams, etc. Such a society, on acquiring the use of the bow and arrow, immediately and necessarily undergoes many changes and developments far-reaching in their character. The quest for meat becomes the dominant activity of the people and necessarily results in different daily associations, habits of thought, and views of the future.

A society that tames and domesticates animals instead of hunting them for a living necessarily acquires different habits and a widely different kind of social organization. Agriculture develops rapidly.

In consideration of the foregoing facts, we find that the introduction of certain impersonal forces into the economy of any society necessarily changes the character of that economy, which necessitates in turn some sort of a readjustment of the habits, customs, and institutions of that society to its changed economy. Here we have a simple and definite sociological law that stands the test of universal application. This is the fundamental law upon which must be founded anything resembling a science of jurisprudence, or its chief concomitant science—economics.

Open and candid recognition of this simple law is refused by the ultra-conservative mind because it conflicts with the petrified ideal of stability. But stability cannot be realized by ignoring the law. It can be realized only by adopting stable principles of change, growth, and development.

The function of jurisprudence is to devise and define the rules of social conduct best adapted to the avoidance of social jars and frictions incidental to the changing conditions of industrial and social activity, and to the expeditious settlement of the disputes that arise. In order to adequately perform this function in the present age it becomes necessary for the jurist to abandon "the eternal principles" of Aristotle and even to sidetrack some of the venerable dogmas handed down by the immortal Blackstone.

If we conclude that jurisprudence has developed to the point where it is entitled to be known as a science, then it is a social science and should be given a prominent place in the university as one of the subdivisions of sociology, and there taught as a "pure" science in co-ordination with the other subdivisions of sociology. Each of these several subdivisions casts a strong sidelight on all the others and all have their psychological aspects.

We should now distinguish between jurisprudence (defined and taught as a science) and the practice of law, which is an art. In the professional law schools the subject of law is approached, taught, and studied from the viewpoint of art and not from the viewpoint of science, which is proper and should continue.

The distinction between science and art need not be fully discussed here. "Science is knowing, while art is doing" is a very expressive phrase, though subject to much qualification. John Stuart Mill says: "Art in general consists of the truths of science arranged in the most convenient order for practice, instead of the order which is most convenient for thought and contemplation." These brief quotations do not make the distinction entirely clear, but will suffice for the present purpose.

Art is as old as the human race. Song is older than speech. Our harp and wind instruments originated in antiquity thousands of years before the notes of music were caught and placed symbolically on the printed scale to be read and rendered on the scientifically constructed instruments of today. The drawing of pictures began in the primeval forests and caves many long ages before a canvass or brush was invented, but modern science began only three hundred years ago. These instinctive achievements were planless, but today science makes the rules for art. As taught in our educational institutions today, art consists in the principles of science carried out and applied to some scheme of operations. The ends of art are foretold and achieved by regular and disciplined methods.

The difficulty and goal of the sociologist were well expressed more than a third of a century ago by Professor Frank W. Blackmar when he wrote the following lines:

"Common as the facts of society

which we observe about us are, the knowledge of their real nature and their reduction to system and order are difficult tasks. . . . When we attempt to bring system into our knowledge of human society we find that it is difficult to collect sufficient data to furnish the groundwork of science. We find that there are not a sufficient number of generalizations formed that are universally true to readily establish a well defined body of principles of sociology. The laws that control society and the forces that operate it are not sufficiently understood to make the science of sociology easily determined or easily mastered. Yet it is the task of sociology to compass with well defined boundary a body of social knowledge, to classify it, showing its order and logical sequence, to discover the forces that generate and move society and to determine and define the laws that control it. Its duty as a science is not done if it fails to point out the extent and manner in which society can be forced into certain lines of development or progress by the combined choice and action of mankind."

In conclusion I will merely suggest that the legal profession, while practicing its art (or "applied" science—if you wish) can exert a powerful influence in placing on the bench in our courts of last resort men who are intimately acquainted with whatever knowledge the immature science of sociology has to offer. Our legal system is a system of judge-made law, notwithstanding the enactments of our legislative bodies. The jurist on the bench is not merely a referee in controversial matters, but is a lawmaker in the broadest sense of the term. Judicial rulings far outnumber legislative enactments, and every decision of an appellate court establishes or affirms a law within the jurisdiction. The decisions of our federal Supreme Court give it a broad policy-forming character in national affairs, which fact should be clearly recognized, appreciated, and defended as long as we desire the rule of reason in preference to the dictates of partisan passion, and as long as the Court does not impinge upon the constitutional powers and traditional functions of Congress. The exercise of this juridical function in a broad way becomes imperative with the development of "administrative law."

HISTORIC MARRIAGE

STATE OF OHIO, LAWRENCE CO., SS:—It is hereby certified by me, A. T. F. Fuller a Justice of the Peace in and for said county:

To all the rulers of the different continents and all the kingdoms therein, to all the people thereof both black and *white* also to the red and *parti coulord ones*, and also to all the Governors of the United States, and their constituents, *consistant* and *inconsistant* therein—but more *particularly* to the *Abolitionests therin*, and to Ali the Monsong King of Bambary and if he is dead to his representatives (legal and illegal)—the state of Ohio, Lawrence County, ss—I hereby *certifie* that on the 17 day of December, A. D. 1845, I solemnized the marriage of Seldon Peters with Miss Martha Ferguson by the authority of a *licence* from the Clerk of the Court of Common Pleas of said County and State, and that I acted the old soldier and kept as comfortable as I could and partook of a most splendid entertainment with *Bride* and Groom and all the gentry.

—A. T. F. FULLER, J. P.

No. 1863, Filed January 26, 1846
Marriage Record Vol. 4-5,
Probate Court, Lawrence Co., Ohio.

Contributor: Virginia Bridges, Ironton, Ohio.

TRIAL COUNSEL

(A Short Short Story)

By MEYER COHEN
of the New York City Bar

J. Cunningham McGoogle, Esq., inchoate trial counsel, bestirred himself at the desk; pregnant with ideas, he had been giving rapid-fire birth to them in writing on the confining quarters of a trial brief. And now, feeling proud and tremulous as only one who has outdone Mother Dionne herself can feel, he carefully tucked his multiple brain children into the fresh, leathery prison of his brief case; he pulled fast the zipper, unloosed it playfully in reverie, and permitted himself the comforting thought that just so was it within his Blackstonian powers to fasten or loosen the tangling knots that so securely held the defendant Tombsbound in the matter of the People of the State of New York against Louis Blooey and others under indictment for robbery in the first degree.

Well satisfied with himself, the young lawyer, now six months in practice, stretched back his 6 feet of lanky framework, swung his long-legged underpinnings one by one in not unrhythmic sweeps that bespoke themselves eloquently of prior practice, settled a run-down rubber heel in a receptive niche just beyond the desk blotter, worked the back of his neck limply into finger-locked hands, and mused tranquilly through half-shut eyes of keen, guileless brown. The swivel chair groaned on its hinges and then subsided, as though it too were lost in thought with its occupant.

At last, in answer to his prayers, he was to try his very own first case; well, anyway, the very first case not counting the recent action of the Payup Renting Corporation against J. Cunningham McGoogle himself, when he had come so perilously close to seeking cheerless, corollary refuge from the all-embracing viewpoint of the Avon bard that perhaps, all the world's not only a stage, but also a law office too, if need be.

The facts passed before him in rapid review.

Louis Blooey and four others had been apprehended at about 11:15 P. M. in a speeding taxicab by radio squad car officers with drawn revolvers just a few minutes after the stick-up of Ginsberg's Jewelry Store. At the first screech of the police siren, pearl necklaces, diamond rings, rubies, emeralds, and three shining pearl-handled six-shooters had been showered from the cab windows like rice at a wedding send-off. At the station house, Isadore Ginsberg, complainant, pale, shaken, angry and fearful by turns, had positively identified four of the prisoners as the stick-up artists. The taxicab driver and the fifth man, his passenger, were released when it appeared that the robbers had commandeered the car at gunpoint.

Louis Blooey's windy, winding story, however, had captured McGoogle's imagination. Here, at last and indeed, was one of those truths that are stranger than fiction. It was up to him, McGoogle, to make a doubting world, or at least twelve select men therefrom, see and believe that virgin truth as he, McGoogle, saw and believed it.

"Counselor," Blooey had said with wide, indignant Jimmy Durante eyes, "this is a big surprise to me. I am a innocent man and a upstanding citi-

zen of New York and Chicago what never done nothin' but sell good booze to good citizens. I ups and blows into this town three years ago with my pal 'Screwy' Martin to learn us a good trade for ourselves, like carpenter or plumber or sumpin'. Well, Counselor, we goes and gets sore at each other, and he goes his way and I goes mine. So I am lookin' around for a good trade for three years, when who do I see the other day but my old pal 'Screwy.' He looks like he is doin' okay, so I ups to him and says, 'Hello, Screwy!', and he is sure glad to see me. This is at a quarter to eleven. We goes to Murphy's Bar and Grill and we blows each other to a row of Tommy Collinses. We are talkin' about this-a and that-a and old times in Chicago and how hard it is to learn a new trade in New York, when around comes 11:15 P. M., which is my bedtime, and I says 'So long, Screwy, I will be gettin' in touch with you soon.' I am out on the sidewalk about two seconds when out of a clear sky I see my pals Jake, Patsy and Mike, and so I says 'Hello, fellows!' And they sure are in a hurry 'cause they are walkin' fast and they grab a cab what is just pullin' out and say 'C'mon Louie, we is goin' on a party and you is sure welcome.' So I am piled in and everybody is excited, but Jake says 'It's okay, Louie, this is gonna be a excitin' party.' Well, Counselor, in another minute the place is lousy with whistles and bluecoats and business rods and I am not beginnin' to like Jake's idea of a party. I am just about to tell him what I am thinkin' when a pair of bracelets is slapped on me, and whaddya think, Counselor, I am charged with bein' a common, low-down thief. Imagine! But it is all a big mistake or a frame-up and I am a innocent guy what wouldn't hurt a fly in me soup. Yea, and what's more, this Tombs place is full of innocent guys what are bein' framed like me, 'cause I am just a guy what is lookin' around to learn a good trade like a carpenter or plumber or sumpin'. Well, Counselor, this other guy in the cab, what says he is a passenger, is let go. I raise a awful big holler 'cause this guy is almost a dead ringer for me and I am a innocent man what has never been in a New York clink. About this police record? Now, Counselor, that stretch in Walla Walla was a frame; and that bit I done in Leavenworth was a mistake; about that time I did out in Joliet, I never got a chance, I was railroaded. Yea, I sure am a guy what gets himself a loadful of raw deals. I am not coppin' no plea like those mugs Jake, Patsy and Mike 'cause I am a innocent man, Counselor, and besides that other guy in the cab what got off, he sure looks a awful lot like me and he is wearin' the same kind of clothes and that sure raises a lot of reasonable doubts, Counselor. And I have written to Screwy Martin and he is comin' over to testify I am drinkin' at Murphy's Bar and Grill when these mugs is blastin' at Ginsberg's quarry. So you see, Counselor, this is all a big surprise to me."

J. Cunningham McGoogle permitted his thoughts to flow into new channels. The hazy panorama of a defense that combined the fine elements of alibi and mistaken identity stretched before him in a not unpleasant maze of legal detail. He patted the trial memoranda in his brief case with a confident gesture. From the opening motion to exclude the witnesses, down to the last sonorous request to charge—it was all there with painstaking accuracy and days of ceaseless preparation. Of such stuff must trial lawyers be made, he mused with satisfaction. He, J. Cunningham McGoogle, Esq., would see that no injustice was done. The young man glanced at his wrist watch. It was

half past one. The jury had been selected that morning and in just thirty more minutes he would be "on trial." McGoogle allowed himself the luxury of remembering the poise, the dignity and astuteness with which he had questioned the jurors. It had suddenly brought an appraising look from the assistant district attorney, and the judge had listened with an increasing interest, while the jurors, much older men, had paid respectful attention. It had all been very flattering and encouraging. In only thirty minutes more he would be in the midst of an exciting trial, matching wits and battling with a skilful, experienced opponent. The prospect roused McGoogle to sudden activity, and he left his office forthwith for the courtroom.

On the streets, newsboys were shouting an extra. Something about a police officer killing a hold-up man during a jewelry store robbery. McGoogle paid no attention; not for him were such mundane unessentials now, for his mind was too filled with the impending trial. Yes, indeed, no matter how one looked at it, the name of J. Cunningham McGoogle would soon be a name to be reckoned and conjured with in criminal trial work, those eyes of his seemed to say as they dreamily glittered and glowed.

At the counsel table he arranged his trial memoranda as court convened. Louis Blooey was led into the inclosure by an attendant; but something was obviously wrong; he was quaking, a changed man.

"Counselor," blurted Blooey, "did you see the papers? I am sunk. Screwy Martin went back to finish the job and got himself bumped off cold. Counselor, I'll sure get railroaded and framed again if I can't grab a plea."

J. Cunningham McGoogle, Esq., inchoate trial counsel, picked up his trial memoranda from the table; carefully he tucked his multiple brain children into the fresh, leathery prison of his brief case and pulled fast the zipper. . . .

"I THINK it not improbable that man, like the grub that prepares a chamber for the winged thing it never has seen but is to be—that man may have cosmic destinies that he does not understand. And so beyond the vision of battling races and an impoverished earth I catch a dreaming glimpse of peace.

"The other day my dream was pictured to my mind. It was evening. I was walking homeward on Pennsylvania Avenue near the Treasury, and as I looked beyond Sherman's Statue to the west the sky was aflame with scarlet and crimson from the setting sun. But, like the note of downfall in Wagner's opera, below the sky line there came from little globes the pallid discord of the electric lights. And I thought to myself the Gotterdammerung will end, and from those globes clustered like evil eggs will come the new masters of the sky. It is like the time in which we live. But then I remembered the faith that I partly have expressed, faith in a universe not measured by our fears, a universe that has thought and more than thought inside of it, and as I gazed, after the sunset and above the electric lights there shone the stars."

—JUSTICE HOLMES.

"MY TESTIMONY, YOUR HONOR"

By E. L. JORDAN

The shrill cry, "He didn't do it intentionally," rang through the crowded old courtroom. A young girl sitting on the witness stand was the person who had uttered these strange words. She was the chief witness in the famous trial in which Mr. Jenkins, an attorney, was being tried for attempting to murder one of his clients. She was the attorney's secretary.

The Court motioned the girl into silence and asked the testimony to be continued. She went on as follows:

"I am only a humble stenographer, beggin' your Honor's pardon for being such a humble person, with no rights at all. I can't even vote. I'm not of age yet. But mark you well, sir, I wish to make a sworn statement that the law business is not what it's cracked up to be. In the first place in order to be a good lawyer, poor Mr. Jenkins has had to be everything from and including a diplomat, genius, have the bedside manner of a charming society doctor, plus the patience of a saint, and heaven only knows that Mr. Jenkins hasn't got all of these qualities. What's that? You want me to get to the point. Well, I'm getting to it, though I admit I'm a trifle slow. But all these things must be told to show just how you're wronging Mr. Jenkins.

The trouble all began on one bright Monday. We was taking care of an estate. 'Twasn't much of an estate. Something like fourteen odd children being the heirs. I don't mean the children was queer or anythin'. That's just a popular saying'. What's that? You want me to get on? Well, these children's mother left an estate valued about $500, and as I said before, it wasn't much of an estate. To top everything off these folks were farmers and mighty suspicious of lawyers. The oldest brother was the worst. He had heard that Mr. Jenkins had just got back from a month's vacation in Florida, and putting two and one together and getting six, he was "all fired shure," quoting him, that Mr. Jenkins had gone south with their money. So this Monday, he stomps into the office demanding to see the Lawyer Jenkins. Sayin' he'd handle the wolf in sheep's clothin', for going south on honest folks' money. He marched into Mr. Jenkins's office and pounced on Mr. Jenkins and yelled that if he didn't cough up every cent of his ma's money, he'd shake it out of him. He hollered some more that his poor ma wouldn't rest easy in her grave if she knew that any law men were getting a big cut out of her money. Well, Mr. Jenkins was speechless. He kept gettin' redder, until I thought he'd bust. Finally when Big Brother let up a bit, he let go with the choicest collection of words I've ever heard. The main theme of his sermon was that if Big Brother didn't trust him, how would he ever get the case settled, and to get the —— out of the office before he tossed him out. Well, he did, following up with a chair and a few law books. I mean tossed him out of the office. Well, I guess that's about all there is to tell."

Big Brother won his case in a way. At least he was given an hour to get out of town. The Bar Association got together and bought Mr. Jenkins an iron cross for his service to the county. Some of them still think the jury was too lenient.

THE PERFECT TRIAL JUDGE

By Judge WILLIAM H. GRIMBALL of Charleston, S. C. Delivered before American Bar Association.

AFTER my twelve years' experience upon the trial bench of South Carolina I wish to report to you gentlemen of the American Bar Association what I consider to be the necessary qualities of the perfect trial judge.

He should be a sweet-tempered tight-rope walker. He should possess so much patience that people will forget that there was ever such a person as Job.

He should have no home, no family, and no friends, and should love isolation, movie pictures and crossword puzzles.

He should be a tough, old fellow—not too old and not too tough.

He should know some law—not too little, and not too much. He should remember that nobody—neither the lawyers nor himself knows what the law really is, and that Saturday's "Yes" often becomes Monday's "No" upon the arrival of the West Publishing Company's advance sheets in the mail.

In those jurisdictions which hold to the scintilla rule he should define a scintilla as a piece of evidence so infinitesimally small as to require the combined endeavor of a majority of the Supreme Court to determine that it is in fact any larger than absolute zero.

Physically he should have a stomach made of cast iron, and a hide tough enough to resist the attacks of all manner of bugs, itch and mosquitoes.

He should always preserve the balance of thought, and should never under any circumstances non-suit the same lawyer twice in the same day—unless the second case happens to be the last trial at the term and it also happens to be getting close to the time for the last bus to leave for the judge's home town.

And now, my good friends, it happens to be getting close to the time for the last bus to leave for my home town in South Carolina, and so I am now going to non-suit myself.

TO A RETIRING LAWYER

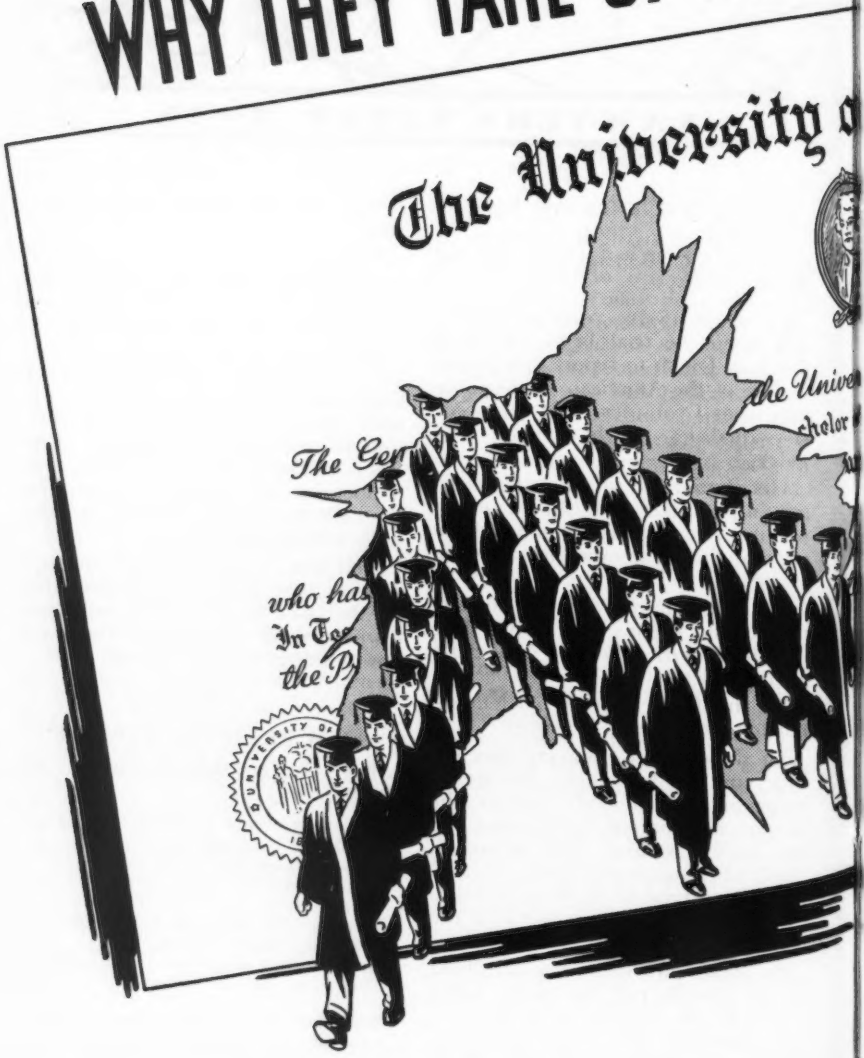
By Dorothy Cope Hulse, 37 Ashwood Ave., Dayton, Ohio.

The twilight hour of life has come—
A life that was well spent;
A lawyer seeks to lift the load
'Neath which his back is bent.

He lifts with care each heavy tome,
They stand in neat array;
He takes them from their dusty home—
They're up for sale today.

Each old lawbook his thin hands stroke,
True friends of by-gone years.
A quiv'ring sigh for mem'ry's sake,
Calls forth the unshed tears.

WHY THEY TAKE UP LAW



THE recent report of the special committee on economic condition of the bar lists these replies to a questionnaire to young lawyers on the reasons they chose the legal profession.

Natural desire and ambition	38%
Parent or near relative an attorney	13%
Advantages of knowledge of law in business	8.5%
Financial advantages of the profession	8.1%
Desire for an independent profession	7.2%
Influenced by their parents	5.3%
Past business experience showed need of law	5.2%
Desire for education	4.4%
Interest in forensics	3.5%
Possibilities for legal research	1.5%
Political advantages of profession	1.3%

¶ WILL THEY SUCCEED? Time alone can tell the story but from the early stages of their practice to the ripe age of retirement the habit of daily use of the trustworthy text treatment of the law in AMERICAN JURISPRUDENCE is a worthwhile corner stone which *will* support a *worthwhile* and *lasting* success.

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A servant, tried and true;
'Tis hard for any man of law
To say his task is through.

A law book here, a fee book there,
Di'ries of his own life
Begun when first he passed the Bar—
The day he took a wife.

He dreams of cases he has had
And argued, pro and con,
Of some, perchance, which he has lost,
But most of cases won.

His office desk—old-fashioned, yes—
The squeaky swivel chair,
His filing case,—will all be sold,
And soon no longer there.

* * *

His books are gone in moving vans,
The office cold and bare,
Naught left therein but memories—
Why tarry longer there?

His time has passed, he now may lift
The load of law-debating life;
Take for a while, the wondrous gift
Of surcease from the strife.

He locks the door, gives up the key,
Lifts bravely high his chin,
With steady tread he starts for home,
A new life to begin.

AN IMPARTIAL CHARACTER WITNESS

Contributed by: Hon. L. H. Bancroft, Richland Center, Wisc.

SOME time ago in the trial of a damage case in the Circuit Court for Richland County, Wisconsin, one Patrick Boyle, a substantial and prosperous farmer, known in his community as a man of strong convictions, and fearless in expressing his opinions, was called by the Plaintiff as a character witness against the Defendant. After answering the usual preliminary questions in which he stated that he was well acquainted with the Defendant, and knew his reputation in the vicinity where he resided for truth and veracity, and that his reputation for such was bad, he was asked the further question, "From his reputation for truth and veracity, would you believe the Defendant under oath?"

Ans. "No sor, I would not."

On cross-examination the following dialogue ensued:

"Well, Pat, you have known the Plaintiff just as long as you have the Defendant, haven't you?"

Ans. "Yes sor, I have."

Q. "Well you know his reputation for truth and veracity just as well as you do the Defendant's, don't you?"

Ans. "Yes sor, I do."

"Well from that reputation you wouldn't believe him under oath either, would you?"

Ans. "No sor, I would not."

OWNER NOT LIABLE FOR TRESPASSING OF CAT

DAMAGE ACTION FOR $1300 DENIED BY MUNICIPAL JUDGE PAONESSA; RECOVERY POSSIBLE ONLY WHERE THERE IS KNOWLEDGE OF BAD TRAITS; USUALLY DOCILE.

DOES a plaintiff have a cause of action sounding in tort against his neighbor for the trespass of the neighbor's cat?

This question was presented to Alfred E. Paonessa, judge of the Municipal Court this week, when he was called upon to pass on the sufficiency of a complaint, to which a demurrer was interposed which alleged that such complaint failed to state a cause of action.

By the allegations of the complaint it was made to appear that the defendant's cat got into the plaintiff's home during their absence on a trip last year.

Down the Chimney?

Although not specifically alleged in the complaint it seems that the plaintiffs' house was locked and no doors

or windows left open so that the only means of ingress left open to the defendant's feline was a chimney down which the animal made its way.

It is further alleged that upon their return, the plaintiffs found the cat in the house. The furniture, and furnishings of their home were in a much damaged and soiled condition, all as a result of the action of said cat. It was further alleged that the damage suffered by the plaintiffs is a direct result and proximately caused by the negligence of the defendant in permitting said cat to stray away from home and to enter the premises of the plaintiffs. The damages alleged to have been suffered by the plaintiffs to their property and for physical and mental anguish was $1300.

Negligence Point

It was agreed by counsel that as to the allegation for damages for physical and mental anguish, that the demurrer should be sustained.

Remaining was the one question whether the complaint stated a cause of action for negligence?

The answer, Judge Paonessa said, must rest on the status of the law relative to liabilities of owners of domestic animals for their trespasses. His opinion concluded:

"In an exhaustive annotation in 33 A.L.R. beginning at page 796 we there find a group of cases dealing with injuries by cats. It is there said, 'that since the cat has a legal status of an animal mansuetae natural, its owner may safely keep it, and will not be liable for its trespasses or for injuries by it, in the absence of knowledge on his part of a vicious or mischievous tendency in the individual cat.' (Citing among others Bischoff v. Cheney (1914) 89 Conn. 1, 92 Atl. 660. McDonald v. Jodrey (1890) 8 Pa. Co. Court 142.)

"It should be pointed out that nowhere in the complaint before us is it alleged that the defendant knew of the vicious or mischievous propensity of his cat.

"In Bischoff v. Cheney, supra, it is truly said, 'that the cat is not such a species of domestic animals naturally inclined to mischief, such as, for example, cattle, whose instinct is to rove, and whose practice is to eat and trample growing crops.'

"The cat's disposition is kindly and docile, and by nature is one of the most tame and harmless of all domestic animals. The infrequency of damage from its wanderings and the freedom to roam permitted by all, makes especially reasonable the rule that no negligence can be attributed to the mere trespass of a cat which has no vicious or mischievous propensities; and consequently no liability attaches for such trespasses, since an owner cannot be compelled to anticipate and guard against the unknown and unusual (Bischoff v. Cheney).

"In passing on the liability of the owner of a cat for killing of a canary bird, it was said in part in McDonald v. Jodrey, supra, 'But the owner of a domestic animal is not responsible for every depredation which it may commit; he is as a rule, only liable for the results of its known mischievous tendencies.'

"It may be as here alleged that plaintiffs' property was damaged but in view of the rules of law seemingly so well settled, we are constrained to sustain the defendants' demurrer to the plaintiffs' complaint in this case. . . .

"And it is so ordered."

WHEN "NOT READY" WAS A GOOD DEFENSE

Contributor: Thomas W. Roland, Malvern, Ark.

MR. C. had been arrested on information filed with the Squire by an hostile neighbor charging him with shooting his shote.

Mr. C. explained to his attorney that he was innocent and although the pig had been tearing down his fences, entering his fields and destroying his crops he, nevertheless, was not guilty and desired to fight the charge to the last ditch. Also that he was without funds.

The case was set for trial the following afternoon but the attorney, suffering from "crediti tus," advised

Mr. C. to seek a postponement and during the time try to secure appeasement for the attorney's ailment. Obligingly the Squire continued the case and subsequently granted two additional continuances, the last very reluctantly. Finally the Squire, weary of it all and battered considerably by the demands of the prosecuting witness, Mr. B. for trial, set same on the afternoon of July 4th, admonishing Mr. C. that trial would be had on that date regardless.

The attorney was still suffering and no retainer as yet had been forthcoming. A lack of vitamin fee.

Court was to be held in the shade of a very large and spreading white oak, still July, in Arkansas, is a very arid month; very dusty and disagreeable, filled with hot wind and extreme dryness. The trial day came and the attorney was worse, that is in health. Realizing that trial would be had without his presence the attorney impressed on the mind of his client to rely on the defense, if it was one, that his attorney was unable to attend and that he was not ready for trial. Dubiously, Mr. C. accepted the plan of defense and with probably undue faith in his attorney, was present among about 300 other residents of the community when the Squire called Court.

"Is the State ready?"

Because of the absence of the State's Attorney, Mr. B. was conducting on the part of the State and replied in a very cocksure affirmative.

"Is the defense ready?"

"No sir, your honor, my attorney's sick. Can't be here. I'm not ready for trial."

The jury was empaneled and the trial proceeded. The State proving among other seemingly convincing evidence that three young boys, relatives of Mr. B. were about 500 yards away and heard the report of the gun, saw Mr. C. in the field with the gun and knew that the animal slain was a young boar belonging to Mr. B.

The State rested.

"The defense may introduce testimony."

"Attorney's sick. Can't be here. Not ready for trial."

Whereupon Mr. B. made an earnest appeal to the jury for conviction. Mr. C. being afforded an opportunity to reply, stayed religiously with his instructions and replied again, "Attorney's sick. Can't be here. Not ready for trial."

The six members of the jury retired to another distant white oak and deliberated all afternoon, first however, having enjoyed a most sumptuous dinner on the ground provided by the good women folk of the community. Being filled with fried chicken and all the trimmings and too, probably, the spirit of the day, the jury finally wandered slowly back and reported the astounding verdict of "not guilty."

Mr. B. jumped to his feet, frothing at the mouth and muttering, stammered out something about an appeal.

"What sayeth the defendant?" (After the din and turmoil had subsided.)

"Your honor, I've already said; My attorney's sick. Can't be here. I'm not ready for trial!"

NOTE: The above is told with no variations and actually as it happened. Afterwards, Uncle John, one of the jurors told me that the jury "thought them boys might a been a lying when they said they could tell a bor shote at 500 yerds."

TRIALS AND TRIBULATIONS OF A YOUNG LAWYER

Contributor: Erby L. Jenkins, Knoxville, Tenn.

When I was only a barefoot boy at my mother's knee
I decided that when grown up a lawyer I would be.

After finishing high school I had the same desire
To be some day a great man, to the bench I did aspire.

With this ambition as my goal to college I was sent
Where I studied all the liberal arts 'til the family roll was spent.

Then I went to Law School, the best one in the State
Where I was taught procedure and pleadings up to date.

There I learned my contracts, my bailments and carriers
What would be a meeting of minds and what were legal barriers.

I learned the law of persons and the causes of divorce
Which make many a wife a widow when properly enforced.

The criminal laws I learned, I thought, right to perfection
All about false pretense and bribery at an election.

I learned also upon what grounds a writ would abate
And finally was admitted to the bar of our State.

I thought right then my fortune was made until I looked around
And saw the lawyers' shingles hanging all over town.

I finally found a kind lawyer who consented to take me in
He said, "So you're trying to make a lawyer, what an awful sin."

About the first thing I had to do was to collect some Doctor's bills
And many were the complaints I heard of the high price of pains and pills.

And then there came the colored man and to me his story told,
"I'm in trouble and have no money now but am as good as gold.

"Just take my note and when I get out, I'll pay you every dime
"You need the practice anyway, for you it will be fine."

I took his note and tried his case, the Justice set him free,
And now he's not afraid of the law, he's only dodging me.

Next was a friend who had a case "I'll risk you tho you're young."
And much oblige was all he said when the lawsuit I had won.

And then there was the sweet young thing whose husband did abuse;
She had no money but wanted a divorce, how could I refuse?

"Your fee I'll pay, you can depend on that, when from that brute I'm free."
But never have I seen this girl since the Court made her free.

Then came the man thru an auto mishap had lost his only cow;
He was too outraged to talk about fee, he wanted justice now.

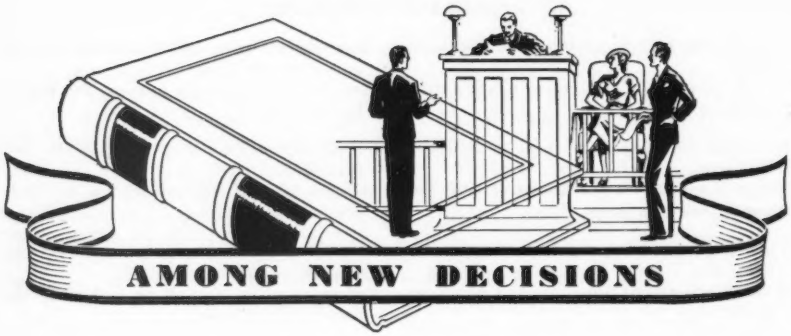
He said, "I'll pay you after the trial together with all cost."
But I never found my client in the crowd after the case I'd lost.

I've been told much by good lawyer friends of mine
That in every young man's practice comes a starvation time.

They say that all good lawyers who are now what we call great
Never attained their greatness by luck on a silver plate.

So I guess I'm going thru the said starvation time
When all my legal knowledge won't bring me in a dime.

But I'm taking it very calmly as calmly as can be,
Just a-workin' and a-hopin' that fate will smile on me.



Abatement and Revival — *bastardy proceeding.* In Pryor v. Jump, 183 Okla. 560, 83 P. (2d) 828, 119 A.L.R. 627, it was held that where, in a bastardy proceeding, a person has been found by the court to be the father of the bastard child, and a finding and judgment of the court providing for the support of such child has been made and entered by the court and accepted by the legal representative of the child, and thereafter such father dies, all proceedings therein are abated and are not susceptible of being revived in the name of the legal representative so as to give the county court further jurisdiction therein.

Annotation: Death of putative father before, pending, or after judgment as affecting bastardy proceedings. 119 A.L.R. 632.

Accord and Satisfaction — *by part payment.* In Rye v. Phillips, — Minn. —, 282 N. W. 459, 119 A.L.R. 1120, it was held that the rule discarded that a promise of the creditor to accept and of the debtor to pay something less than the sum due on a liquidated debt is not binding for want of consideration, even though the promise is performed and the debtor formally released.

Annotation: Rule that promise by creditor to accept, or acceptance of, less than amount due on a liquidated indebtedness in discharge of the whole, is not binding upon creditor as regards unpaid amount. 119 A.L.R. 1123.

Alteration of Instruments — *addition of another maker to note.* In Stacey v. Fritzler, — Or. —, 84 P. (2d) 97,, 499, 119 A.L.R. 887, it was held that the addition of another maker without the consent of the original maker of a note is a material alteration which renders the note unenforceable against the original maker save by a holder in due course not a party to the alteration, under the provisions of the Negotiable Instruments Act that any alteration which changes the number or relations of the parties, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration which, with certain exceptions, will render the instrument void as to the maker.

Annotation: Addition of maker or other obligor to commercial paper as material alteration discharging nonconsenting party. 119 A.L.R. 898.

Appeal — *law of the case on second appeal.* In Re Estate of Reamer, 331 Pa. 117, 200 A. 35, 119 A.L.R. 589, it was held that an erroneous determination on application for appointment of an administrator, that petitioner's relationship to decedent as an adopted daughter of decedent's deceased sister was not such as to give

her an interest in the decedent's estate, is not binding on the court in decreeing distribution of the estate.

Annotation: Judgment or order in connection with appointment of executor or administrator as res judicata, as law of the case, or as evidence, on questions other than the validity of the appointment. 119 A.L.R. 594.

Assumpsit — *recovery back by dealer of excessive portion of sales tax.* In Re Kesbec, 278 N. Y. 293, 16 N. E. (2d) 288, 119 A.L.R. 536, it was held that a dealer who has collected from customers, by reason of an improper interpretation by the municipal authorities of municipal sales tax legislation, an amount in excess of the lawful tax, which he has been validly required to deposit with the city comptroller in order to obtain a review of the assessment by certiorari, is, by reason of his want of beneficial interest, not entitled to its return.

Annotation: Right as between dealer or manufacturer and taxing authorities in respect of taxes and license fees illegally received or collected. 119 A.L.R. 542.

Automobiles — *statute imposing liability on owner as applying to semitrailer.* In Hennessy v. Walker, 279 N. Y. 94, 17 N. E. (2d) 782, 119 A.L.R. 1029, it was held that the owner of a semitrailer attached to a separately owned tractor cannot be regarded as the owner of a "motor vehicle" within a statute providing that every owner of a motor vehicle operated upon a public highway shall be liable for death or injury resulting from negligence in its operation by any person legally operating the same with the permission, express or implied, of such owner, where the legislature has elsewhere in its vehicle and traffic laws treated motor vehicles and trailers or semitrailers as belonging to separate categories.

Annotation: Liability of owner of trailer or semitrailer attached to motor vehicle owned or operated by another for injury or damage due to negligence in operation of the motor vehicle. 119 A.L.R. 1035.

Automobiles — *wanton negligence of driver of motor vehicle.* In Universal Concrete Pipe Co. v. Bassett, 130 Ohio St. 567, 200 N. E. 843, 119 A.L.R. 646, it was held that the parking of an unlighted truck for a few minutes on the proper side of a city street after dark on a misty, rainy night, 2 feet from the curb, if there was a curb, in order that the driver, who had lost his way, might cross the street and make inquiry, the lights of which truck were burning several miles away and several minutes before collision, while negligence, is not wanton misconduct, and the injection of the element of wanton misconduct into such case to the point that the trial court instructs the jury on such issue, constitutes prejudicial error and a judgment based thereon must be reversed.

Annotation: What conduct in driving an automobile amounts to wantonness, wilfulness, or the like, precluding defense of contributory negligence. 119 A.L.R. 654.

Conflict of Laws — *inheritance rights of surviving spouse.* In Hite v. Hite, — Mass, —, 17 N. E. (2d) 176, 119 A.L.R. 517, it was held that a statutory provision that real estate shall descend according to the law of the state does not operate to enable a widow of a nonresident decedent to take all the realty in virtue of a statute which provides that a surviving spouse may take the whole of the estate of an intestate dying without leaving issue if its value does not exceed $5,000, where, though the real and personal property in the state does not exceed $5,000, the total net estate exceeds that amount.

Annotation: Nonresidence of decedent owning real property in the state as affecting application of local statute relating to descent of real property. 119 A.L.R. 523.

Constitutional Law — *exceptions to Sunday closing ordinance.* In Mt. Vernon v. Julian, 369 Ill. 447, 17 N. E. (2d) 52, 119 A.L.R. 747, it was held that the exceptions from the operation of a Sunday closing ordinance, of hotels, restaurants, eating places, drugstores, tobacco stores, confectionery stores, news dealers, ice dealers, shoe shining parlors, garages, gasoline filling stations, telephone exchanges, telegraph offices, and moving-picture theaters, render it arbitrary and discriminatory and therefore invalid as an exercise of the police power.

Annotation: Constitutionality of discrimination by Sunday law or ordinances as between different kinds of business. 119 A.L.R. 752.

Constitutional Law — *regulation of dry cleaners and laundries.* In Miami Laundry Co. v. Florida Dry Cleaning & Laundry Board, — Fla. —, 183 So. 759, 119 A.L.R. 956, it was held that a statute providing for the fixing, upon notice and hearing, of schedules of prices for dyers, cleaners, and laundries which shall be such as will permit the business to be so conducted as to provide the public with safe and sanitary service at a reasonable price while enabling the efficient proprietor of such business to continue in business with a fair return on the actual reasonable investment made therein, does not unconstitutionally restrict the constitutional liberty of contract.

Comment note: Price fixing by legislature or administrative body. 119 A.L.R. 986.

Contracts — *quantum meruit by farm tenant for work done in reliance on invalid lease.* In Nelson v. Street, 148 Kan. 587, 83 P. (2d) 793, 119 A.L.R. 1222, it was held that where a tenant was induced to perform labor and sow seed under a contract for a lease for certain real estate, which contract was void under the statute of frauds, Gen. Stat. 1935, § 33–106, the tenant can recover on quantum meruit from the landowner for the labor performed and seed planted.

Annotation: Rights and remedies of tenant who takes possession of land under agreement in violation of statute of frauds. 119 A.L.R. 1225.

Copyright — *extent of rights acquired.* In Dorsey v. Old Surety Life Ins. Co. 98 F. (2d) 872, 119 A.L.R. 1250, it was held that the copyright of forms of insurance policies does not prevent others from using the plans of insurance embraced in the copyrighted policies, but only precludes the copying of the means of expression used, to the extent that such means were original with the author.

Annotation: Law of copyright as applied to contract forms or plans. 119 A.L.R. 1254.

Courts — *jurisdiction of Federal courts over foreign corporation.* In McLean v. State, 96 F. (2d) 741, 119 A.L.R. 670, it was held that the appointment by a foreign corporation of a local agent for the service of process, under a state statute so requiring, is not a waiver of its right when sued in a Federal court to be sued either in the district of its incorporation or in the district where the plaintiff resides.

Annotation: Federal venue statute providing that where jurisdiction is founded on diversity of citizenship suit shall be brought only in the district of the residence of either the plaintiff or defendant as affected by

fact that party is corporation doing business or subject to service of process in state other than that of its incorporation. 119 A.L.R. 676.

Damages — *breach of c. i. f. contract.* In Obrecht v. Crawford, — Md. —, 2 A. (2d) 1, 119 A.L.R. 1129, it was held that the measure of damages recoverable for a buyer's failure to perform a c. i. f. contract for the purchase of flour in another country, which the seller has resold, is the difference between the contract price and the resale price, with interest in the discretion of the jury from the date of resale, together with such sum as the seller may have lost through the fluctuation in foreign exchange, with interest in the jury's discretion from the date such loss was incurred.

Annotation: Measure of seller's damages under executory contract as affected by his resale of the property. 119 A.L.R. 1141.

Easements — *advertising sign on wall.* In Baseball Publishing Co. v. Bruton, — Mass. —, 18 N. E. (2d) 362, 119 A.L.R. 1518, it was held that an unsealed instrument purporting to give the exclusive right and privilege of maintaining a sign on another's wall for a stated term, with the privilege of renewal, may properly be construed as granting an easement in gross.

Annotation: Nature and extent of right granted by contract for use of wall or roof for advertising purposes. 119 A.L.R. 1523.

Election of Remedies — *by obtaining judgment against agent.* In Eckstein v. Caldwell, — R. I. —, 200 A. 434, 119 A.L.R. 1311, it was held that the obtaining of a judgment against one whom a plaintiff believes to be a principal, but who is only the agent for an undisclosed principal, is no bar to a subsequent suit against the real principal, provided that the plaintiff did not know of the agency at the time of the judgment, that the judgment remains unsatisfied, and that the plaintiff has acted with reasonable diligence after discovery of the agency.

Annotation: Action or judgment against agent as affecting right to maintain action against undisclosed principal. 119 A.L.R. 1316.

Estoppel — *to deny estate by entireties.* In Stone v. Culver, 286 Mich. 263, 282 N. W. 142, 119 A.L.R. 512, it was held that a conveyance by a married woman to herself and her husband, which, in naming her as grantor by the name which she bore prior to her marriage and as grantee by her married name, apparently created a tenancy by the entireties, operates to estop her administrator and heirs from asserting that such a tenancy was not created as against one who has taken a conveyance from the husband after her death in the belief that as surviving tenant by the entireties he was the sole owner of the property.

Annotation: Estoppel to deny estate by entireties by reason of facts extrinsic to instruments which on their face created such estate. 119 A.L.R. 515.

Evidence — *burden of proof as to bank's redelivery of bonds received as special deposit.* In Bright v. Hood, — N. C. —, 199 S. E. 630, 119 A.L.R. 820, it was held that when a bank is shown by receipts issued by it to have received bonds for safekeeping, and the bonds are shown to have been in the possession of its successor against whose receiver suit is brought to recover the bonds or their value, the burden of proof rests on the defendant to show redelivery of the bonds to the depositor or due care in keeping them.

Annotation: Presumption and burden of proof, in action or proceeding against bank or its liquidator, as to reasons or justification for failure to return subject of special deposit on demand. 119 A.L.R. 831.

Evidence — *conclusiveness of charter of corporation.* In White v. Central Dispensary and Emergency Hospital, — App. D. C. —, 99 F. (2d) 355, 119 A.L.R. 1002, it was held that the fact that a corporation is incorporated as a charitable corporation is not conclusive of its character as such, upon one suing it for negligence.

Annotation: Conclusiveness of charter as regards character, kind, or purposes of corporation. 119 A.L.R. 1012.

Evidence — *declarations of deceased in will contest.* In Holloway v. Parker, — Ark. —, 122 S. W. (2d) 563, 119 A.L.R. 1359, it was held that declarations of a testatrix showing affection for relatives and testamentary intentions at variance with small bequests made by a will alleged by contestants to have been forged, whether before or after the date of the alleged will, are admissible in a will contest where the contestants offer other proof tending to show that the will is not genuine.

Annotation: Admissibility of testator's declarations upon issue of genuineness or due execution of purported will. 119 A.L.R. 1366.

Evidence – *exercise of care to avoid injury after danger observed.* In Caplan v. Arndt, 123 Conn. 585, 196 A. 631, 119 A.L.R. 1037, it was held that the trial court's conclusion, in denying the applicability of the doctrine of last clear chance where a pedestrian crossing the street was struck by a motor truck, that after the driver observed that the plaintiff was in danger, or in the exercise of reasonable care should have observed the danger, he (the driver) had no opportunity by the exercise of reasonable care to avoid the collision, held to be supported by the evidence which included the facts that the street intersection near which the accident occurred was poorly lighted, that the pedestrian was wearing dark clothes, that he was crossing at a place other than the regular crossing, and circumstantial evidence afforded by the length and character of the truck's brake marks, justifying the impression that the driver applied the brakes as hard and as soon as could reasonably be expected under the circumstances.

Annotation: Doctrine of last clear chance. 119 A.L.R. 1041.

Evidence — *result of test of truthfulness of witness.* In People v. Forte, 279 N. Y. 204, 18 N. E. (2d) 31, 119 A.L.R. 1198, it was held that the refusal of the trial court to grant the request of counsel for one charged with murder, who took the stand in his own behalf, that he be examined under the pathometer, commonly known as the "lie detector," cannot be regarded as error where there is no proof of general scientific recognition of the efficacy of such a test.

Annotation: Physiological or psychological deception tests. 119 A.L.R. 1200.

Executors and Administrators — *appointment of person not interested in estate.* In Re Estate of Cloward, — Utah, —, 82 P. (2d) 336, 119 A.L.R. 123, it was held that where the conditions prescribed by statute under which a person not interested in a decedent's estate may be appointed administrator are not shown to exist, a probate court is without jurisdiction to make such an appointment, and its act in doing so is without effect.

Annotation: Appointment as administrator of one not a member or nominee of a member of the class of persons designated by statute as eligible to appointment, where no one in better right has applied. 119 A.L.R. 143.

Executors and Administrators — *revocation of letters of administration.* In Re Elder, — Or. —, 83 P. (2d) 477, 119 A.L.R. 302, it was held that one whose personal interests are so adverse to the interests of a decedent's estate and of those entitled to its distribution that both cannot be fairly represented by the same person is not a proper person to administer the estate.

Annotation: Personal interests of executor or administrator adverse to or conflicting with those of other persons interested in estate as ground for revocation of letters or removal. 119 A.L.R. 306.

Exemptions — *nonresident's right to benefit of.* In Smith v. Georgia Granite Co. 186 Ga. 634, 198 S. E. 772, 119 A.L.R. 550, it was held that it is declared in the Code, § 114–302, that no claim for compensation under the Workmen's Compensation Law "shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors." The exemption declared in the foregoing statute is a mere privilege, and not an absolute right. It is provided only as a matter of state policy for the benefit of residents of this state, and cannot be claimed either by or for a debtor who has removed to another state, and is no longer either a permanent or a temporary resident of Georgia. It appearing without dispute from the evidence that the defendant in attachment had removed to another state and was no longer a resident of the State of Georgia, held, regardless of the constitutional questions raised,

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the judge erred in finding in favor of the answer of the garnishee on the question of exemption.

Annotation: Debtor's exemption (other than homestead) as applicable in favor of nonresidents or of residents absent or about to remove from the state. 119 A.L.R. 554.

Exemptions — *proceeds of sale of exempt property.* In Gillett State Bank v. Knaack, — Wis. —, 281 N. W. 913, 119 A.L.R. 464, it was held that the proceeds of a voluntary sale of personal property exempt from execution are, though sold with the intention of investing the proceeds in other exempt property of like character, not exempt in the absence of a statute providing for such exemption.

Annotation: Debtor's exemption of personalty as attaching to proceeds of sale or exchange thereof. 119 A.L.R. 467.

Fire Department — *right to both pension and compensation.* In Lincoln v. Steffensmeyer, 134 Neb. 613, 279 N. W. 272, 119 A.L.R. 914, it was held that the receipt and acceptance by appellee of benefits under the Workmen's Compensation Act will not operate to bar his right to a fireman's pension, and § 48–111, Comp. Stat. 1929, when construed with §§ 48–121, 48–122, as amended by Laws 1935, chap. 57, §§ 40, 41, and §§ 48–117, 48–130, and 48–148, Comp. Stat. 1929, of the Workmen's Compensation Act, is ineffectual in barring appellee's right to both benefits.

Annotation: Right to compensation under workmen's compensation act as affected by pension, insurance, gratuities, or other benefits not derived from the act itself. 119 A.L.R. 920.

Fraudulent Conveyances — *creditor's suit to set aside conveyance after appointment of liquidator.* In Motlow v. Southern Holding & Securities Corp. 95 F. (2d) 721, 119 A.L.R. 1331, it was held that failure to allege demand on and refusal by the state superintendent of insurance, as liquidator of an insolvent surety company under statutory authority, to bring suit to recover assets of such company alleged to have been wrongfully transferred, and failure to allege that application was made to the court having authority over the acts of such liquidator, for an order directing the liquidator to bring suit or authorizing the creditor to do so, are fatal to the right of a creditor of the surety company to maintain an action for the purpose.

Annotation: Right of individual creditor or creditors of debtor in liquidation or receivership to maintain bill to set aside conveyances or transfers in fraud of creditors. 119 A.L.R. 1339.

Guardian and Ward — *accounting as prerequisite to action on bond.* In Fitzpatrick v. National Surety Co. 148 Kan. 303, 80 P. (2d) 1059, 119 A.L.R. 79, it was held that in an action against the surety on a guardian's bond, under the provisions of Gen. Stat. 1935, § 38–222, the final accounting by the guardian in probate court is a necessary prerequisite to an action against the sureties on the bond of the guardian.

Annotation: Accounting by guardian, executor, administrator, or trustee as a necessary condition of action on his bond. 119 A.L.R. 83.

Highways — *municipal liability.* In Myers v. Louisville, 274 Ky. 764, 120 S. W. (2d) 221, 119 A.L.R. 837, it was held that a municipality may, in the performance of its duty to keep its streets in a reasonably safe condition, close them to public travel, and, when

closed, there can be no recovery for injuries resulting from their use.

Annotation: Liability of municipality or other governmental body to pedestrian for injury in street closed or partially closed during construction or repairs. 119 A.L.R. 841.

Intoxicating Liquors — *prohibiting sale within certain distance of church.* In Ford v. Easterling, — Miss. —, 184 So. 153, 119 A.L.R. 634, it was held that the members of the Mississippi Supreme Court were, in this case, equally divided on the question of the reasonableness of an ordinance of a county board of supervisors, prohibiting the sale of beer and wine in a certain unincorporated village of 204 inhabitants within 1,500 feet of any school or church, although religious services are held in the village church only once a month, and the effect of the ordinance is to preclude such sale in the business district of the village.

Annotation: Reasonableness of statutory or local regulations prohibiting sale or license for sale of intoxicating liquors within prescribed distance from church, school or other institution. 119 A.L.R. 643.

Limitation of Actions — *action against nonresidents to impress trust on land in state.* In Herthel v. Barth, 148 Kan. 308, 81 P. (2d) 19, 119 A.L.R. 326, it was held that where an action is brought against nonresidents to impress a constructive trust on land in this state, the action is one in rem which might have been brought at any time after the cause of action accrued, and the nonresidence of defendants, in such a case, does not toll the statutes of limitation.

Annotation: Nonresidence or absence of defendant from state as suspending or tolling statute of limitations, where relief is sought, or could have been sought, by an action or proceeding in rem or quasi in rem. 119 A.L.R. 331.

Limitation of Actions — *action on policy on life of missing person.* In Howard v. Equitable Life Assurance Society, — Wash. —, 85 P. (2d) 253, 119 A.L.R. 1302, it was held that when the death of the insured cannot be established without the aid of the presumption arising from his unexplained absence for seven years, the statute of limitations does not begin to run against the beneficiary's right of action on a life insurance policy until the expiration of the seven-year period. (Overruling Warner v. Modern Woodmen, 124 Wash. 252, 214 P. 161, 34 A.L.R. 87.)

Annotation: Statutory or contractual limitation where presumption of death of the insured from seven years' absence is relied upon. 119 A.L.R. 1308.

Limitation of Actions — *practicability of service on nonresident.* In Arrowood v. McMinn County, — Tenn. —, 121 S. W. (2d) 566, 119 A.L.R. 855, it was held that the fact that a nonresident motorist might, under a statute so providing, have been served with process through the secretary of state, renders inapplicable a provision tolling the statute of limitations while a defendant is absent from or resides out of the state.

Annotation: Statutory provision denying or limiting right of nonresident, or of resident absent from state, to benefit of statute of limitations, as affected by fact that he was subject to service of process during absence or nonresidence. 119 A.L.R. 859.

Mortgage Foreclosure — *parties defendant.* In Phillips v. Parker, 148 Kan. 474, 83 P. (2d) 709, 119 A.L.R. 801, it was held that when a mortga-

gor of real property dies intestate, leaving heirs, such heirs are indispensable parties in an action to foreclose the mortgage. A judgment in such an action against the administrator in his representative capacity only is insufficient to sustain a decree foreclosing the mortgage, and such decree, and a sheriff's sale and sheriff's deed based thereon, are void for the lack of proper parties. The purchase by the mortgagee at such sheriff's sale is not a payment of the note.

Annotation: Necessity in suit to foreclose mortgage on property of decedent of joining as parties devisees or heirs of decedent, and effect of failure to do so. 119 A.L.R. 807.

Physicians and Surgeons — *illegal practice.* In People v. Pacific Health Corporation, Inc. — Cal. (2d) —, 82 P. (2d) 429, 119 A.L.R. 1284, it was held that a stock corporation, operated for profit, which in consideration of a premium undertakes to bear the expense of medical or surgical services rendered to a contract holder by a physician or surgeon on its approved list, is illegally engaged in the practice of medicine.

Annotation: Health service plan as violation of medical practice acts. 119 A.L.R. 1290.

Pleading — *sufficiency to show duress.* In Coughlin v. City of Milwaukee, 227 Wis. 357, 279 N. W. 62, 119 A.L.R. 990, it was held that facts showing duress in obtaining agreements from city employees that deductions may be made from their salaries for the benefit of a municipal unemployment relief fund are not alleged by a complaint in an action to recover the amount of such deductions which charges that it was represented to such employees that if such agreements were not signed drastic action would be taken, which was understood to mean that failure to sign an agreement might mean demotion or dismissal, and further alleges that representations were made that in consideration of the signing of such agreements the signers would receive time off to equal the amount deducted from their pay.

Annotation: Pleading duress as a conclusion. 119 A.L.R. 997.

Quo Warranto — *to oust public officer.* In State v. Wymore, — Mo. —, 119 S. W. (2d) 941, 119 A.L.R. 710, it was held that the question of existence of grounds for forfeiture of a public office by an incumbent need not have been presented to another court for determination before quo warranto proceedings may be instituted.

Annotation: Quo warranto to oust incumbent of public office, based on misconduct or other ground of forfeiture. 119 A.L.R. 725.

School Teacher — *grounds for dismissal.* In Re Ganaposki, — Pa. —, 2 A. (2d) 742, 119 A.L.R. 815, it was held that the refusal of one holding a teaching certificate as an instructor in physical education and under contract to "teach" "under the authority of" the school board "and subject to the supervision and authority of the properly authorized superintendent of schools," to act as basketball coach, is a neglect of duty and "persistent and wilful violation of the school laws" within the provisions of a teachers' tenure law making such neglect or violation permissible ground for dropping a teacher.

Annotation: Instruction in physical education or coaching of athletic sports as within duties assumed by, or that may be assigned to, teacher, or among the subjects in respect of which teacher applicants must qualify. 119 A.L.R. 819.

It May Not Be Unconstitutional

.....but it does seem to be unusual for anyone to practice law without Shepard's Citations!

Sidewalks — *municipal liability for inequality in.* In Ray v. Salt Lake City, 92 Utah, 412, 69 P. (2d) 256, 119 A.L.R. 153, it was held that it cannot be said as a matter of law that a difference in the elevation of adjoining sections of a sidewalk in a city thoroughfare, ranging between one fourth of an inch on one side to seven eighths of an inch on the other, is so slight that danger to a pedestrian from its existence may not be reasonably anticipated.

Annotation: Degree of inequality in sidewalk which makes question for jury or for court, as to municipality's liability. 119 A.L.R. 161.

Spendthrift Trust — *assignment by beneficiary.* In Kelly v. Kelly, 11 Cal. (2d) 356, 79 P. (2d) 1059, 119 A.L.R. 71, it was held that an assignment, executed during the continuance of the trust, by the beneficiary of a spendthrift trust wherein the creators provide that every interest therein be taken as made and given to the persons respectively entitled "free and clear of his or her debts, contracts, engagements, alienations, and anticipations and of all responsibility therefor," does not give the assignee the right to claim the trust property after it reaches the hands of the beneficiary.

Annotation: Validity and effect of contract to assign, or attempted assignment of, interest in spendthrift trust. 119 A.L.R. 78.

Taxes — *name under which property of decedent should be assessed.* In Carter v. Wroten, 187 S. C. 432, 198 S. E. 13, 119 A.L.R. 379, it was held that a tax title is invalid where the land which the tax deed purports to convey was assessed, levied upon, and sold in the name of "the estate of" a deceased owner upon whose estate there had been no administration, where the title to real estate of an intestate descends at his death to his heirs and a statute provides that all lands shall be assessed as the property of the person or persons having the legal title to and the right of possession of the land at the time of listing and assessment, save that in the case of "estates administered" the property shall be listed and assessed as the property of "the estate of" the person deceased.

Annotation: Name under which property of decedent should be assessed. 119 A.L.R. 383.

Trial — *officer of law as accomplice.* In Guthrie v. Commonwealth, — Va. —, 198 S. E. 481, 119 A.L.R. 683, it was held that an officer of the law who, for the purpose of obtaining evidence of violation of the law, buys an intoxicating beverage from a person not authorized to sell intoxicating liquor, is not an accomplice in the sense that it is the duty of the trial court to instruct the jury to act with caution upon his uncorroborated testimony.

Annotation: Detective or other person participating in crime to obtain evidence as accomplice within rule requiring corroboration of, or cautionary instruction as to, testimony of accomplice. 119 A.L.R. 689.

Trusts — *rights of creditors of beneficiary.* In Koelliker v. Denkinger, 148 Kan. 503, 83 P. (2d) 703, 119 A.L.R. 1, it was held that a statute which provides that the beneficiary of a trust for the receipt of rents and profits of lands cannot make a voluntary disposition of such beneficial interest where a right of disposition has not been conferred by the instrument creating the trust does not preclude such beneficial interest from being subjected to the claims of creditors.

Annotation: Validity of spendthrift trusts. 119 A.L.R. 19.

THE HUMOROUS SIDE

An Actual Happening. The mayor of a small North Carolina city has one and only one way of answering his telephone. Always when his telephone rings, he picks up the receiver, and unceremoniously announces, "----------, Justice of the Peace, Mayor and member of the American Legion."

On March 10th, 1939, after having visited Raleigh and conferred until an early hour the night before with the Senators and Representatives there assembled, he hurried back to meet with certain of his citizens at 11 o'clock, to hear representatives of the National Planning Board. Since the new courthouse there has not been completed, all meetings have to be called in one of the churches or elsewhere, and this particular meeting was called to be held in the office of the most Honorable Mayor. His Honor arrived, arrayed in light blue checked trousers, coat to match with tie as green as ebony, with a red flower in the lapel of his coat.

To introduce the first speaker he arose, discarded his cane, and said, "Ladies and Gentlemen, you are all fortunate in having with you this fine morning one of the best known men in our State, one that has done more for our County of -------- and Town of -------- than any other man, (just then his telephone rang, he picked up the receiver and said), "----------, Justice of the Peace, Mayor of ---------- and a member of the American Legion." He wonders why everyone laughed.

Contributor: E. C. Robinson,
Clinton, N. C.

Payoff Creditorum.

They rated young Bates as a promising lad,
His record was perfectly splendid.
His bankers declared he was bound to succeed:
He always paid back what they lended.

For years he had paid on the first of the month,
As prompt and as sure as the tide.
His bankers joyfully slapped on his back;
His pleura expanded with pride.

His steno called him "Mr. Bates,"
The waiters gave him service,
His wife was always meek and still
When noises made him nervous.

But now all his bankers are clammy and cool;
The waiters walk by and ignore him;
The stenographer sniffles and calls him "Toots;"
His wife won't do anything for him.

He always had paid on the first of the month
And fame and good fortune had beckoned;
Poor Bates! He is ruined, his future is shot:
This month he delayed 'til the second.

—*Sterling Brandt.*

Contributor: W. S. Tucker,
911 Lowman Bldg.,
Seattle, Wash.

A Cautious Collection Letter.

Mr. ----------,
Chicago, Ill.

Dear Sir: Four weeks ago today I wrote you one of my letters. There is nothing more to add here, except to bring my account to date. Among other things, I said, in reference to the payments you proposed to make, "Even that is all right, if you give me your word that, once having begun, you will keep them up." If I say that I am not surprised that you have not even made a beginning, you will run with this letter to a lawyer and talk about suing me for libel. If I say that every one who has told me, as you have again and again, that if I don't

like you I can do what I want, has had cause in the end to regret it, you will tell your wife that I hound you with threats, so I must not say that either. If I emphasize that although I have never met you I know unfortunately only too well from experience just what type man you are, you will complain to Dr. ----------, that I am insulting, so here too I must use caution and discretion. And if I say that I have measures to collect this old amount you will sure save this letter to show to the judge.

I have exercised, I am sure you will agree, the utmost restraint and patience in this matter, which, as I also wrote you on January 30, will be a year old on Thursday of this week March 2. To this you have your flip and childish answer ready, "So what of it?"

We shall see.

Yours truly,

A Will in Rhyme. The following humorous example of the testamentary disposition of the property of a Mr. Joseph Bell, of Streatham, England, an export agent, follows:

I will and bequeave
To her I bereave,
Rose Georgina Bell,
About whom all speak well,
My chum and my wife,
My soul and my life,
All my estate.
So make no mistake,
My worthy solicitor,
Lest o' nights unadvisedly I frequently visit yer.
As straw was required in the making of bricks,
It is needful to have an executrix,
So I appoint Miss Jane Fordham,
Provided she'll act.
And as executor the work to enact,
My brother Frank Bell, who's acutely exact.

This will was duly proved on the 3rd June, 1918. Mr. Bell having left estate valued at £1,164: 4: 10. There is no evidence as to whether he has since had occasion to visit the solicitor.

—*American Bar Ass'n Journal.*

Contract of Marriage. (Prepared by a Louisiana Justice of the Peace.)

We have met together for the purpose of joining this man ---------- of Acadia Parish and this woman ---------- in the estate of matrimony at $1.00 per month as long as they shall live together lawfully join together as woman and husband situated in ---------- Parish, La., or forever hereafter holds his peace, as contract of marriage.

This 18th day of Oct. 1937.

Witness our hands this 18th day of Oct., 1937.

---------- ----------
---------- ----------

Before me ----------,
J. P.

Filed for record Dec. 10, 1937, at ------ o'clock -- M. and same day recorded in Miscellaneous Book No. 6, at pages 418 and in -------- Book No. ---- at pages -------- Records of -------- Parish, Louisiana.

----------,
Clerk of Court.

A Contributor Writes: "I received a letter today from a client to whom I had sent a statement of her account, which letter I think is worthy of a place of honor in your "Humorous Side." The letter is as follows:

"Dear Mr. Rubin:

The wolf who has been at my door since last October has just had pups in the kitchen, and as soon as I can sell them, I will send you the payment I owe."

Contributor: Ben B. Rubin,
San Diego, Calif.

Not Very Nice. I am placing in your hands a bill of $50.00 fifty dollars to colect for me and send it to me soon as you can for I nead it rite now. If you can't get it give it to somebodi who can get it. It is over due and the way he acts is not verry nice. he admits owing the money and I have his acnoligment of the bill and all I get is promisis. So I want my mony at once. he is up there with a lumbering company and I no he can pay it if he wanted to. his name is ---------- and you will find him in or at Hoods port or Shelton Washington. He left hear and sed nothing to me about going with out paying me. It is 2 years pas due now and is time for pay ment. respetfully yours

(Signed) A.

Contributor: Louis Spencer,
Oakland, California.

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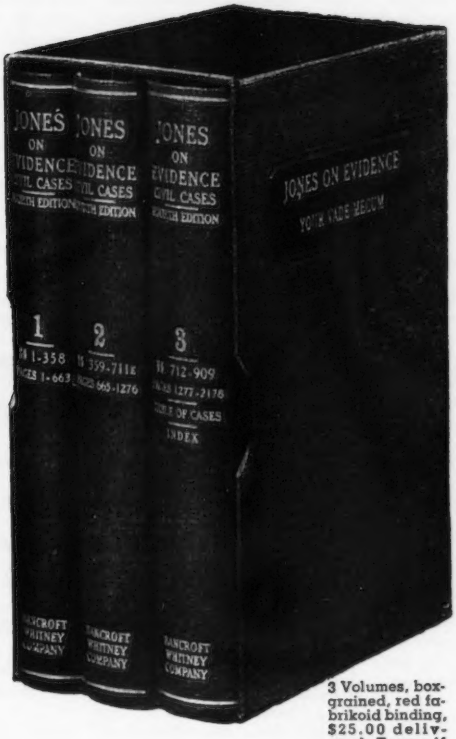

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ALL LAW BOOK DEALERS HAVE JONES FOR SALE

Don't Go Near the Water. The following letter was received by an office associate of the contributor:

"My dear Counsellor:

Tell me can not something be done with a person that annoys others by throughing out of there window water, one can have clothes on the line and they will get all wet, only a month ago I had a suit of mine on the line and a glass of water was thrown out we will say at a cat the poor cat was doing nothing but walking on the fence, my coat got all the water.

One day a pail of water came down on the shed and my mother got it all over her head.

What do you advise."

Personally I would advise that the poor cat try walking on another fence.

Contributor: Chester J. Flaum,
New York City.

Misprint. From the report of the Committee on Legal Education and Admission to the Bar of the State Bar of Michigan, printed in the September, 1938, issue of the Michigan State Bar Journal:

"For the successful and *unethical* practice of law, more is required than legal knowledge and the power of legal reasoning. It is assumed that these elements are obtained in law schools. . . ."

Is this official recognition of the inseparability of an unholy combination?

Contributor: Morris Zwerdling,
Flint, Mich.

The Last Word. The judge and the attorney for the defendant had been engaged in many heated arguments during the trial and the attorney had demanded a mistrial repeatedly. Suddenly the judge, waving his finger pointedly at the defense counsel, exclaimed:

Judge: You may think you're fooling the jury, but you can't fool me. I don't want to hear another word out of you!

Defense Counsel: Just *one* more word, Your Honor,—*exception.*

Contributor: Edward Amron,
New York City.

Two Stories from Oklahoma. A lawyer in one of South Dakota's small towns, called at the town clothing store to look over some clothes. The clerk, who happened to be a newcomer, proceeded to show him some work shirts and overalls. The lawyer said, "No, I want to buy a suit." The clerk said, "Well I thought you were employed on the W. P. A. project west of town," whereupon the indignant attorney replied, "Why hell, no, I'm the town's leading lawyer." We got quite a lot of fun out of that because this lawyer is somewhat of a wit, one of our legal wags. At a recent term of Circuit Court a young farm hand was up for chicken stealing. Instead of seeking legal assistance he had been relying upon some of his friends. These friends had been busy before court calling upon the judge, the sheriff and state's attorney but without avail. When his case was called he had no attorney and the Court inquired whether he was represented by counsel. This lawyer arose and thus addressed the Court: "Your Honor, I am not this man's attorney but I know him quite well and can answer the Court's inquiry. He has about ten lawyers but none of them have been admitted to the Bar."

Speaking of It Lightly. A colored gentleman was once called as a witness for the defense during an arraignment of a defendant charged with felonious assault, in the Magistrates' Court in New York, with the late Judge Edward Weil presiding. After the witness had been examined by the attorney for the defendant, the magistrate turned to the witness and snapped:

"Have you ever been convicted of a crime?"

"Yes, yo' Honor, ah was once found guilty of disorderly conduct," hesitatingly answered the witness.

"What was the nature of the disorderly conduct you were convicted of, Mr. Witness?" continued the Court.

The darky scratched his head and then drawled parenthetically, "Judge, yo' Honor, it was disorderly conduct, *rape.*"

"Step down from the stand," ordered the Court, and then turning to the defendant and his counsel, snapped:

"Defendant held for action of the grand jury. Bail fixed in sum of $1,000. Next case."

Contributor: Samuel W. Corwin,
New York City.

Some Iniquity. A farmer owing considerable money left the country. After having been informed that his father had died and

HOW COURTS USE A.L.R.

No. 2 — EASING THE BURDEN

IN FEDERAL LAND BANK v. STATE BOARD DEPT.–Fla.–, 184 So. 125, the court found it expedient in clearing up an involved point of law to quote an entire A.L.R. annotation. In this instance the use of A.L.R. saved the court countless hours both in locating all the pertinent cases and in writing their exact holdings. In this way AMERICAN LAW REPORTS is in constant use both in trial and appellate courts.

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he was to inherit quite a bit of property, and to get around his judgments and indebtedness, he had the following filed:

"And my iniquity to all personal property and effects of my late father N. E. G. I transfer to my mother." 157–609 Deed record, Sumner Co. Kansas.

Ours Does Too. As I was enjoying today the current number of "Case and Comment" an acquaintance, Mr. "B," who sometimes borrows an old shotgun from me, came in to pass the time of day. My office partner was busy on his typewriter and "B" seemed to be quite interested, finally asking what kind of machine it was he was using. After being told the make of the machine, "B" stated he had an old "X" machine at home but that he didn't like the thing. He seemed to be pretty emphatic on the point, so my partner asked him what was the matter with it. Mr. "B" calmly answered, "The darned thing is always misspelling words."

Contributor: Harold F. Dawes,
Commissioner,
Petersburg, Alaska.

Exception Please. It appeared that in a certain case purporting to be heard before a trial justice in the State of Maine one of counsel was discussing at some length the "ramifications" of a certain act, all of which appeared to be boring to the presiding official. Perceiving this, opposing counsel in the spirit of helpfulness suggested that a definition of "ramification" would be in order. To counsel's surprise the Court ruled that this was not necessary inasmuch as he knew perfectly well that a "ramification" was a goat's husband.

Contributor: Nathaniel M. Haskell,
Portland, Maine.

Two Stories from Michigan. A contributor writes:

"Recently, Mr. and Mrs. Smith, local farmers, were engaged in a dispute over the settlement of their marital difficulties, and as part of Mrs. Smith's complaint about her husband's extravagances on their farm she said, 'Well, for one thing there was no use in your buying that gangster plow.'

"Another offering: An Italian friend of mine was about to be sued by a local veterinary for charges arising out of the treatment of a horse, the treatment consisting of some kind of hypodermic injection, and the debtor expostulated about as follows: 'Mr. Beel, how do you know that he helped my horse? How do I know it wasn't water that he put inside of it? Sure, horse was sick, he said she die in three days. He is a liar. I use that horse for three years. I think he is a liar and my word is as good as his. Here's your money.'"

Contributor: Bill F.
Coldwater, Michigan.

Not So Easy. The seven-year-old daughter of the contributor wrote for her teacher the following:

"My daddy is a lawyer, I am going to tell you what lawyer's do. When there is an automobile accident and people say that one of them had the falt of the accident. When that happens the boss calls some lawyer's and the people tell them the story. Then the lawyer's settle the argument and just before the lawyer's go the Boss gives them there money."

Contributor: Lee H. Cranston,
Green Bay, Wisc.

Taxpayers Beware. An affidavit of a real estate appraiser made upon a motion for a deficiency judgment contains this averment:

"That as a result of deponent's examination and investigation, he finds that on the date of the foreclosure sale herein, the subject property was improved by a one-story taxpayer containing three stores with a boiler room and storage room in the basement."

Contributor: William L. Browning, Jr.,
Newburgh, N. Y.

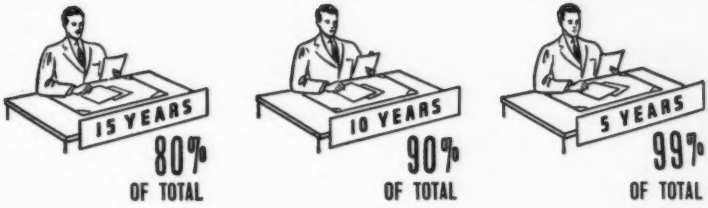
Medical Bill as Real Estate Expenditure. The following episode occurred before the Mass. State Appellate Tax Board:

The appellant taxpayer introduced a schedule of income and disbursements or expenditures for the taxable year, which included an item of $5 for medical treatment to the arm of the taxpayer's rental agent. The corporation counsel for the city, representing the board of assessors, inquired, "Why the medical bill in connection with the real estate expenditures?" The taxpayer replied: "The rental agent, while trying to collect rent from one of the tenants, was thrown down the flight of stairs and injured his arm." The board ruled that this was a proper item of expense.

Contributor: Bernard Ginsburg,
Boston, Mass.

"Little drops of water, little grains of sand,
Make the mighty ocean and the pleasant land."
Carney

INCOME FROM SMALL CASES IN VARIOUS STAGES OF PRACTICE*



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Lawyers, and legal dust,
The scratch of my fountain pen.
The jury yawns and gazes into space,
The Court's asleep. And then
Noises from the street below,
A welcome sound to me . . .
And may there be no moaning of the Bar
When I get up to see!

Contributor: Gene Plasterer,
Court Reporter, Angola, Ind.

Cause for Bewilderment. On January 24, 1939, the following advertisement was placed in the *Houston Chronicle* (Texas) in the Work Wanted column:

"Advocate, 23, legal knowledge of Blackstone, strength of Samson, courage of D'Artagnan, profundity of Spinoza, bewilderment of present day politicians, not yet licensed in Texas, desires a position suited to one with such attributes. Box 1363, Chronicle."

In answer to above-quoted advertisement the following letter was received:

January 25, 1939

"Dear Advocate:

"I'm not offering you a job as I'm looking for one myself. I'm a law graduate from Kentucky, sitting around waiting to take the June Bar, and your advertisement in the Chronicle gave me much merriment. I thought I would write to you as I feel kindred to you, especially as to the passage of bewilderment.

"I would appreciate it if you would give me a ring. I can be reached at J------, and if I am not there a message will reach me shortly. I have a car, no funds, no job, no clothes, a girl, friends, and a good sense of humor. If you can spare the time (I can), I'd like to meet you for a few minutes and discuss the quandaries of life."

"Respectfully yours,
(Signed) "Jay L--------"

Contributor: Milton Moldafsky,
Houston, Texas.

A Layman's Lease. In the case of Laybourn, Conservator vs. Ireland, No. 9347, the District Court of Weld County, Colorado, held that the following instrument was insufficient to constitute a lease:

"1930

"July 1st. As a confirmation to my farm tenant, T. A. Ireland on my farm adjoining The Loup Reservoir and that he be encouraged to make any convenient improvements, regarding the care and benefit of his dairy cow in feed yards and protection shed; I am expecting, and hopeing, he may continue and prosper on the farm for many years, twenty or more, as may continue and develope, to our mutual individual and associated interest.

"John E. Law (signed)
"T. A. Ireland (signed)"

Mr. Law was an elderly man who was later adjudged incompetent; and owned considerable property, while Mr. Ireland was a distant relative. The former typed out the instrument and one wonders whether he was very smart in the above wording, or whether his mind was failing and it was a mere accident that he included wording which nullified an intention to give a lease.

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"Law Student"

Work like a horse
And live like a monk,
You have mapped your course
You have made your bunk.

No time to play!
No time for sleep!
Too short is your stay,
Too black is the deep.

Pity not thy lot,
Regret not thy choice.
In thine inevitable plot
Thou wilt in peace rejoice.

—*Benjamin Liebor*
St. John's University, Brooklyn.

The question of wills has its humorous side, as witness the following instance. The members of a certain family, upon the death of their father, had gathered together to listen to the reading of his will. Several legacies were read out, and each recipient, as he was made aware of his good fortune, burst into tears and expressed a filial wish that his father might have lived to enjoy his fortune himself. Finally, there came this bequest: "I give to my eldest son Tom a shilling to buy him a rope to hang himself." Tom, not to be outdone in filial feeling by his brothers, sobbed out, "God grant that my poor father had lived to enjoy it himself."